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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1012.

THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY.

IN ERROR TO THE COURT OF CHANCERY OF THE STATE OF NEW JERSEY.

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1 To his honor Theodore Runyon, chancellor of the State of New Jersey:

Humbly complaining, showeth unto your honor, your orator, The Provident Institution for Savings in Jersey City, a body corporate of New Jersey, that on or about the nineteenth day of January, in the year one thousand eight hundred and sixty-three, Michael Nugent, of the city of Jersey City, in the county of Hudson and State of New Jersey, became and was justly indebted unto your orator in the sum of eight hundred dollars; and being so indebted, the said Michael Nugent, in order to secure the payment of the said sum of money, with interest, did make and execute, under his hand and seal, and deliver unto your orator a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of sixteen hundred dollars, lawful money of the United States, with a condition thereunder written that if the said Michael Nugent, his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto your orator, its successors or assigns, the just and full sum of eight hundred dollars, lawful —— as aforesaid, on the first day of January, in the year of our Lord one thousand eight hundred and sixty-four, with interest on the same at the rate of seven per cent. per annum, the first interest to be paid on the first day of July then next, and semi-annually thereafter, on the first days of January and July in each and every year, until the principal should be paid, then the said obligations should be void, otherwise to remain in
2 full force and virtue, as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear.

And your orator further shows that the said Michael Nugent and Elizabeth, his wife, and Eliza McCormick, in order to secure the payment of the said sum of money above mentioned, together with the interest thereon, executed and delivered unto your orator a certain indenture of mortgage, bearing date the same day and year first aforesaid, made by the said Michael Nugent and Elizabeth, his wife, and Eliza McCormick, of the first part, to your orator, of the second part, whereby the said party of the first part did grant, bargain, sell, alien, convey, and confirm unto said party of the second part, its successors and assigns, all that certain lot, piece, or parcel of land and premises situate, lying, and being in Jersey City, and in the late sixth ward of said city, in the county of Hudson and State of New Jersey, being the lot of land known and distinguished on a certain map of the property of Cornelius Van Vorst, now deceased, made by Joseph F. Bridges, surveyor, dated in the year eighteen hundred and thirty-five, and filed in the clerk's (now register's) office of Hudson county as lot numbered fourteen (14), in block number sixty-three (63), fronting on the north side of Railroad avenue, being twenty-five (25) feet in width front and ninety-six feet and four inches (96 ft. 4 in.) on the westerly side, and ninety-nine feet six inches on the easterly side thereof,
3 together with all and singular the tenements, hereditaments, and appurtenances, reversions, remainders, rents, issues, and

profits thereof, and also all the estate, right, title, interest, use, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part therein; to have and to hold the said granted and described premises, with the appurtenances, unto the said party of the second part, its successors and assigns, to its and their own proper use, benefit, and behoof forever: Provided always, That if the said party of the first part thereto, their heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto your orator, its successors or assigns, the said sum of money mentioned in the condition of the said bond, with the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage and the estate thereby granted should cease, determine, and be void.

And your orator further shows that after the execution of the said indenture of mortgage the same was, in due form of law, acknowledged by the said Michael Nugent and Elizabeth, his wife, and Eliza McCormick, before a master of this court, and duly recorded in the office of the clerk (now register) in and for the said county of Hudson, in book 28 of Mortgages, page 140, on the twentieth day of January, in the year one thousand eight hundred and sixty-three, as by the several certificates endorsed on the said indenture of mortgage more fully appears.

4 That on or about the thirteenth day of July, eighteen hundred and sixty-nine, the said Michael Nugent and Elizabeth, his wife, and Eliza McCormick, being further indebted to your orator in the sum of seven hundred dollars, in order to secure the payment of the same, did make and execute, under their hands and seals, and deliver unto your orator their bond, dated on the last-mentioned day, in the penal sum of fourteen hundred dollars, with a condition thereunder written that if the said obligors, their heirs, executors, or administrators, should pay unto your orator, its successors or assigns, the just and full sum of seven hundred dollars, lawful money of the United States, on the first day of July, in the year eighteen hundred and seventy, and interest thereon, to be computed from the date thereof, at and after the rate of seven per cent. per annum, and to be paid on the first day of January then next, and semi-annually thereafter on the first days of July and January, in each and every year, until the principal should be paid, without any fraud or other delay, then said obligation to be void, otherwise to remain in full force and virtue. That in order to secure the payment of said bond with interest, the said Michael Nugent and Elizabeth, his wife, and Eliza McCormick executed under their hands and seals and delivered to your orator a certain indenture of mortgage, bearing even date with said last-mentioned bond, whereby the said Nugent and wife and Eliza McCormick did grant, bargain, sell, convey, and confirm unto your orator, its successors and assigns, forever, all of the same premises above described, together with the appurtenances, with a provision that if the said mortgagors, their heirs, executors, or administrators, should pay unto your orator, its successors or assigns, the sum of money mentioned in said last-named

bond, with interest, at the time and in the manner in said bond mentioned, then said mortgage to be void.

That said mortgage was in due form of law acknowledged by the said Michael Nugent and Elizabeth, his wife, and Eliza McCormick, before a master of this court, and on the thirteenth day of August, eighteen hundred and sixty-nine, recorded in book 67 of Mortgages for Hudson county, page 352, as by the certificates endorsed thereon will more fully appear.

5 Both of which said bonds and both of said mortgages are in your orator's possession, ready to be produced and proved.

That said mortgaged premises are now in the possession of John Bell, Patrick Griffen, and James Trumbull, who claim to be entitled to such possession by virtue of some verbal or written agreement with said Michael and Elizabeth Nugent and Eliza McCormick; but your orator insists that if they have any interest in said premises or any right to occupy the same, such rights are subject to your orator's said mortgages.

That each of said mortgages contained an agreement that the said mortgagors would keep the buildings erected or to be erected upon said mortgaged premises *insured* against loss or damage by fire, by insurers, and in an amount approved by your orator, and assign the policy to your orator; in default thereof it would be lawful for your orator to effect such insurance, and the premium or premiums paid therefor should be a lien on said mortgaged premises, added to the amount of said bonds, and secured by said mortgages, with interest at seven per cent. per annum.

That the said mortgagors have not *kept* their said agreement regarding insurance, but that on or about the fifth day of January, eighteen hundred and eighty-one, said insurance expiring at or near that time, and the said mortgagors neglecting and refusing to reinsure the same, your orator effected such insurance for one year in the Hudson Insurance Company in the sum of twelve hundred dollars, and paid therefor on the last-named day a premium of sixteen dollars. That on or about the nineteenth day of De-

6 cember, eighteen hundred and eighty-one, said insurance again expiring at or near that time, and said mortgagors neglecting and refusing to reinsure the same, your orator effected such insurance for one year in the Hudson Insurance Company in the sum of twelve hundred dollars, and paid therefor on the last-named day a premium of sixteen dollars.

That on or about the twenty-first day of December, eighteen hundred and eighty-two, said insurance again expiring at or near that time, and the said mortgagors neglecting and refusing to insure the same, your orator effected the insurance for one year in the Hudson Insurance Company, in the sum of twelve hundred dollars, and paid therefor on the last-named day a premium of fourteen dollars; which said several premiums paid by your orator, with interest thereon from the times of their respective payments, your orator claims to be liens on said mortgaged premises, added to the amount of said bonds and secured by said mortgages.

That at the time of the making of the above-named mortgages

the said Michael Nugent owned a portion of said mortgaged premises in fee-simple, and in the balance of said premises the said Eliza McCormick had a life estate, and the remainder was in the said Michael Nugent; since the making of your orator's mortgages Eliza McCormick died, and Michael Nugent thereupon became the owner of all of said mortgaged premises in fee-simple.

7 And your orator further shows that all of the principal money mentioned in and secured by the said bond and mortgages with large arrears of interest still remains due and unpaid to your orator, whereby the said mortgages and the estate thereby granted have become absolute in your orator and its successors.

And your orator further show that the said Michael Nugent and Elizabeth his wife, and Eliza McCormick, John Bell, Patrick Griffen, and James Trumbull, since the execution of your orator*or* said mortgages, have possessed and enjoyed, and do still possess and enjoy, the said mortgaged premises, and have always received, and still receive, the rents, issues, and profits thereof; and that the said premises are a scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid, and that he or some other person or persons, for it has frequently and in a friendly manner applied to the said defendants above named, or one of them, and requested them, or one of them, to pay and discharge them the said principal and interest moneys so due to your orators on the said bonds and mortgages, and your orator well hoped that they would have complied with such reasonable requests as in justice and equity they ought to have done.

In tender consideration whereof, and forasmuch as your orator has not a complete remedy in the premises, at the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys without the aid of this honorable court, where matters of this nature are particularly cognizable and relievable, to the end, therefore, that the said defendants may, upon their respective oaths, true, full, and perfect answers, make to all and singular the premises, as fully as if here repeated and they thereto particularly interrogated, that they, or some of them, may be decreed to pay to your orator the said principal sum so due on the said bond and mortgage and the interest due and to grow due thereon, with your orator's costs and charges in this behalf sustained, and the amounts paid for insurance with interest, by a short day, to be appointed by this honorable court; and that in default thereof the said defendants, and all persons claiming, or to claim, under them, or any of them, may be foreclosed of and from all right, title, and equity of redemption in and to the said mortgaged premises and every part thereof, with the appurtenances, and may deliver unto your orator the possession thereof, and all deeds, demises, and muniments of title relating to or concerning the same, or that the said mortgaged premises, with the appurtenances, may be sold, and that out of the moneys arising from such sale your orator may be paid the said principal, interest, and costs, and the amounts paid

by your orator for insurance, as aforesaid, with interest.
8 And that your orator may have such further and other relief in the premises as the case may require, and as shall be agreeable to equity and good conscience. May it please your honor, the premises considered, to grant unto your orator a writ or writs of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Michael Nugent and Elizabeth his wife, John Bell, Patrick Griffen, and James Trumbull, therein and thereby commanding them, on a certain day and under a certain penalty, to be and appear before your honor in this honorable court, then and there to answer the premises, and to stand to, abide by, and perform such decree therein as to your honor shall seem meet and agreeable to equity and good conscience. And your orator will ever pray, &c.

BENTLEY AND HARTSHORNE,
Solicitors and of Counsel with Complainant.

9 [Endorsed:] In chancery of New Jersey between The Provident Institution for Savings in J. C., comp't, and Michael Nugent *et ux. et al.*, def'ts. Bill to foreclose. Bentley and Hartshorne, sol'rs. Filed Oct. 18, 1884.

10 In Chancery of New Jersey.

Between THE PROVIDENT INSTITUTION for Savings in Jersey City, Compl't, and MICHAEL NUGENT *et ux. et al.*, Def'ts. } On Bill to Foreclose, &c.

SIR: You are made a party defendant, and subpœnaed to answer the bill of complaint exhibited in the above cause, because it is therein alleged that you as tenant are in possession of the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises.

Dated Jersey City, Nov. 1, 1883.

Your ob't serv'ts,

BENTLEY AND HARTSHORNE,
Sol'rs for Complainant.

To JOHN BELL, Esq.

11 In Chancery of New Jersey.

Between THE PROVIDENT INSTITUTION for Savings in Jersey City, Compl't, and MICHAEL NUGENT *et ux. et al.*, Def'ts. } On Bill to Foreclose, &c.

SIR: You are made a party defendant, and subpœnaed to answer the bill of complaint exhibited in the above cause, because it is therein alleged that you as tenant are in possession of the premises

mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgage premises.

Dated Jersey City, Nov. 1, 83.

Your obt's serv'ts,

BENTLEY AND HARTSHORNE,
Sol'rs for Complainant.

To PATRICK GRIFFEN.

12 In Chancery of New Jersey.

Between THE PROVIDENT INSTITUTION for Savings in Jersey City, Compl't, and MICHAEL NUGENT *et ux. et al.*, Def'ts. } On Bill to Foreclose, &c.

SIR: You are made a party defendant, and subpœnaed to answer the bill of complainant exhibited in the above cause, because it is therein alleged that you as tenant are in possession [of] the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgage premises.

Dated Jersey City, Nov. 1, 1883.

Your obt't serv'ts,

BENTLEY AND HARTSHORNE,
Sol'rs for Complainants.

To JAMES TRUMBULL, Esq.

13 NEW JERSEY, *to wit:*

The State of New Jersey to Michael Nugent and Elizabeth, [L. S.] his wife, John Bell, Patrick Griffen, and James Trumbull, Greeting:

We command you that you personally appear before our chancellor, in the court of chancery, on the thirteenth day of November instant, at Trenton, to answer to a bill of complaint exhibited against you in our said court by The Provident Institution for Savings in Jersey City, and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit, under the penalty of five hundred dollars.

Witness his honor Theodore Runyon, chancellor of our said State, at Trenton, the first day of November, in the year of our Lord one thousand eight hundred and eighty-three.

G. S. DURYEE, *Clerk.*

BENTLEY AND HARTSHORNE, *Sol'rs.*

NOTICE.—The defendant is not required to appear at Trenton in person, at the return day, but if he intends to make a defense it is only necessay for him to answer, plead, or demur to the bill within the time required by law.

14 [Endorsed:] In chancery of New Jersey. Between The Provident Institution for Savings in J. C., compl't, and Michael Nugent *et ux. et al.*, def't. Sub. ad resp. Ret'ble Nov. 13, A. D. 1883. Bentley and Hartshorne, sol'rs. Served on all the within-named defendants November 3d, 1883. C. J. Cronan, sheriff.

15 *Petition for Receiver.*

In Chancery of New Jersey.

Between THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY, Compl't,
and
MICHAEL NUGENT *et ux. et al.*, Def'ts.

To the Honorable Theodore Runyon, chancellor of the State of New Jersey:

Your petitioner, The Provident Institution for Savings in Jersey City, respectfully shows unto your honor:

That your petitioner filed its bill on the eighteenth day of October, eighteen hundred and eighty-three, against Michael Nugent and Elizabeth, his wife; John Bell, Patrick Griffen, and James Trumbull, praying foreclosure of two mortgages, both made by Michael Nugent and Elizabeth, his wife, and Eliza McCormick to your petitioner, the first dated January 19, 1863, made to secure the payment of a bond for eight hundred dollars on January 1, 1864, made by the said Michael Nugent to your petitioner, with interest thereon at seven per cent. per annum; the second mortgage, dated July 31, 1869, made to secure the payment of a bond for seven hundred dollars on July 1, 1870, made by the said Michael Nugent and Elizabeth, his wife, and Eliza McCormick to your petitioner, with interest
16 thereon at seven per cent. per annum; both of said mortgages cover the same premises, being a lot of land in Jersey City, New Jersey, on the northerly side of Railroad avenue, fifty feet westerly from Varick street, being twenty-five feet wide by 99 feet 6 inches on one side and 96 feet 4 inches on the other side. The said Michael Nugent now claims to be the owner of the whole of said mortgaged premises.

2. That there are two buildings on said premises, the one on the front of the lot being a two-story frame building about twenty feet square, used as a store and dwelling-house; the other building, on the rear of the lot, being a one-story and attic frame building, about fifteen feet wide by thirty feet deep, used as a dwelling-house; both of said buildings are badly out of repair, and the premises have depreciated in value so that they are not worth more than two thousand dollars.

3. The owners of said premises have neglected and refused to pay the taxes assessed upon said premises by the municipal authorities of Jersey City for the years 1869 to 1883, inclusive. The total amount of said taxes, with interest, now exceeds the sum of eight hundred dollars.

4. That the whole of the principal of said mortgages is unpaid and the interest is in arrear from July 1, 1876. The unpaid interest now amounts to upwards of seven hundred and fifty dollars.

5. That the tenants now in possession of said premises are John Bell, Patrick Griffen, and James Trumbull, who, together, pay a rent of twenty-two dollars per month. That no part of the
17 rent received by said Nugent from said tenants is applied to

the payment of either the principal or interest of your petitioner's said mortgages, nor is any part thereof used for the payment of said municipal liens.

Your petitioner therefore prays that a receiver may be appointed by your honor to collect the rents of said mortgaged premises now due, or hereafter to become due, with such power as may be necessary; and that the said Michael Nugent be enjoined from collecting said rents, and the said John Bell, Patrick Griffen, and James Trumbull be enjoined from paying over to said Nugent, or to any person whomsoever, any of the rents and profits of said mortgaged premises, until the further order of this court.

THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY.
BENTLEY & HARTSHORNE, *Sol'rs.*

HUDSON COUNTY, } ss.:
New Jersey, }

Earle Insley, being duly sworn, on his oath says: That he is in the employ of the solicitors of the petitioner above named that he has made the inquiries necessary to obtain the information upon which the statements of the above petition are founded, and all the recitals contained in paragraphs one, three, four, and five are true, as deponent believes.

EARLE INSLEY.

Sworn and subscribed before me, this 13th day of November, 1883, at Jersey City.

A. V. VAN FLEET, *V. C.*

18 HUDSON COUNTY, } ss.:
New Jersey, }

Harry M. Hyams, being duly sworn, on his oath says: That he is in the real estate business in Jersey City, and is acquainted with the values of property in that city in the vicinity of the premises described in the above petition; that he has examined said premises, and in his opinion the same are worth, at private sale, about the sum of two thousand dollars; that he has read over the second paragraph of said petition, and all the statements made therein are true, as deponent believes.

HARRY M. HYAMS.

Sworn and subscribed before me, this 13th day of November, 1883, at Jersey City.

EARLE INSLEY,
Master in Chancery of N. J.

19 [Endorsed:] In chancery of N. J. Between the Provident Institution for Savings in J. C., compl't, and Michael Nugent, *et ux. et al.*, def'ts. Petition for receiver. Bentley & Hartshorne, sol'rs. Filed Nov. 28, 1883.

20 HUDSON COUNTY, }
New Jersey, } *ss:*

Cornelius Blauvelt being duly sworn, on his oath says: That on the thirteenth day of November, eighteen hundred and eighty-three, he served the annexed order upon the defendant, John Bell, by delivering to him personally a true but uncertified copy thereof; that on the same day he served said order upon the defendants, Patrick Griffin and James Trumbull, by leaving a true but uncertified copy thereof at each of their respective residences, with a member of each of their respective families above the age of fourteen years; that on the fourteenth day of said month deponent served said order and the petition therein mentioned upon the defendant, Michael Nugent, by delivering to him personally true but uncertified copies of said order and petition.

CORNELIUS BLAUVELT.

Sworn and subscribed before me, this twentieth day of November, 1883, at Jersey City.

EARLE INSLEY,
Master in Chancery of N. J.

21 *On Petition for Receiver. Order to Show Cause.*

In Chancery of New Jersey.

Between THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY, Compl'ts,
and
MICHAEL NUGENT *et ux. et al.*, Def'ts.

This matter being opened to the court by Bentley & Hartshorne, and upon reading and filing the petition of the complainant, and the affidavits thereto annexed—

It is, on this thirteenth day of November, eighteen hundred and eighty-three, ordered that Michael Nugent show cause before the chancellor, on Tuesday, the twentieth day of November instant, at ten o'clock in the forenoon, at the chambers of the vice-chancellor in Jersey city, why a receiver should not be appointed of the rents and profits of the mortgaged premises described in the bill of complaint in this cause. That it is further ordered that in the meantime, after notice of this order, the said Michael Nugent refrain from collecting or receiving, and that John Bell, Patrick Griffen, and James Trumbull refrain from paying over to any person whomsoever any of the said rents and profits until the further order of *of* this court. And it is further ordered that a true but uncertified copy of this order and of said petition be served upon said Michael
22 Nugent within two days from this date, and that a copy of this order be served upon all of said tenants, John Bell, Patrick Griffen, and James Trumball within said time limited.

THEODORE RUNYON, *C.*

Respectfully advised.
A. V. VAN FLEET, *V. C.*

[Endorsed:] In chancery of N. J. Between The Provident Institution for Savings in Jersey City, compl't, and Michael Nugent *et ux. et al.*, def'ts. Order to show cause on petition for receiver. Bentley & Hartshorne, sol'rs. Filed Nov. 28, 1884.

23 *Order Appointing Receiver.*

In Chancery of New Jersey.

Between THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY, Compl't,
and
MICHAEL NUGENT *et ux. et al.*, Def'ts.

This matter being opened to the court by Bentley and Hartshorne, and it appearing that copies of the order to show cause why a receiver should not be appointed in this cause have been duly served upon the defendants, John Bell, Patrick Griffen, and James Trumbull, and that a copy of said order and of the petition for receiver therein named has been duly served upon the defendant, Michael Nugent, as directed in said order, and the chancellor being of the opinion that the prayer of said petition should be granted:

It is on this twentieth day of November, eighteen hundred and eighty-three, ordered that the said order to show cause be made absolute, and that Frank Stevens, Esquire, of Jersey City, New Jersey, be, and is hereby, appointed receiver in this cause, to take charge of the mortgaged premises in said petition and in the bill of complaint in this suit mentioned, and to manage the same, with power to sue for, collect, and receive the rents, issues, and profits thereof (and he is to account for and pay what he shall so receive as this court shall direct), to let the said premises, or any part thereof,
24 from time to time, and to agree concerning the rents to be paid therefor, and to do all things necessary for the proper care and management of said premises.

And it is further ordered that before entering upon his duties he give a bond to the chancellor for the faithful performance of his duties in the sum of five hundred dollars, with such surety or sureties as may be approved by Washington B. Williams, Esquire, one of the special masters of this court, said bond to be filed with the clerk of this court.

THEODORE RUNYON, *C.*

Respectfully advised.
A. V. VAN FLEET, *V. C.*

[Endorsed:] In chancery of N. J. Between The Provident Institution for Savings in J. C., compl't, and Michael Nugent *et ux. et al.*, def'ts. Order appointing receiver. Bentley and Hartshorne, sol'rs. Filed Nov. 28, 1884.

25 Know all men by these presents, that we, Frank Stevens and Wm. R. Dayton, of Jersey City, New Jersey, are held and firmly bound unto the chancellor of the State of New Jersey in the sum of five hundred dollars, lawful money of the United States of

America, to be paid to the said the chancellor of the State of New Jersey and his successors in office: to which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the 20th day of November, eighteen hundred and eighty-three.

The condition of this obligation is such that whereas the abovenamed Frank Stevens has been appointed a receiver of the rents and profits of the mortgaged premises mentioned and described in the bill of complaint in a certain cause depending in the court of chancery of the State of New Jersey, wherein The Provident Institution for Savings in Jersey City is complainant and Michael Nugent and others are defendants:

Now, therefore, if the said Frank Stevens do and shall duly and faithfully account for and pay what he shall receive of said rents and profits as the said court of chancery shall direct, and shall in all things well and truly fulfill and discharge the duties of his said office of receiver, then this obligation to be void: otherwise, to remain in full force and virtue.

FRANK STEVENS. [L. S.]
WM. R. DAYTON. [L. S.]

Sealed and delivered in the presence of—
As to Wm. R. Dayton:
CORNELIUS BLAUVELT.
As to Frank Stevens:
E. S. COWLES.

26 [Endorsed:] In chancery of N. J. Between The Provident Institution for Savings in J. C., compl't, and Michael Nugent *et ux. et al.*, def'ts. Receiver's bond. Bentley & Hartshorne, sol'rs. I approve of this bond as to form and sufficiency of surety. Nov. 21, 1883. W. B. Williams, master. Filed Nov. 28, 1883.

27 *Interlocutory Decree.*

In Chancery of New Jersey.

Between THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY, Compl't,
and
MICHAEL NUGENT *et al.*, Def'ts. } On Bill, &c.

This cause being opened to the court by Bentley and Hartshorne, of counsel with the complainant, and it appearing that process of subpœna for the appearance of the defendants hath been duly issued and returned served upon all the defendants to this suit, and that the said defendants have not filed any plea, demurrer, or answer to said bill within the time limited by law, but have wholly failed and neglected so to do:

It is thereupon, on this eighteenth day of February, in the year of our Lord one thousand eight hundred and eighty-four, ordered, adjudged, and decreed that the said bill be taken as confessed as

against all of the defendants, to the end that such decree may be made as the chancellor shall think equitable and just.

THEODORE RUNYON, *C.*

28 [Endorsed:] In chancery of New Jersey. Between The Provident Institution for Savings in J. C., compl't, and Michael Nugent *et al.*, def'ts. On bill, &c. Interlocutory decree. Bentley and Hartshorne, sol's. Filed Feb'y 18, 1884.

29 *Master's Report.*

In Chancery of New Jersey.

Between THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY, Compl't, *and* MICHAEL NUGENT *et al.*, Def'ts. } On bill to foreclose.

I, Earle Insley, one of the masters in chancery of New Jersey, do hereby certify and report to his honor the chancellor that I have seen and examined the bonds and mortgages mentioned in the bill of complaint in this cause; the bond first mentioned therein I have marked "Exhibit C^1 for Complainant," the mortgage first mentioned "Exhibit C^2 for Complainant," the bond secondly mentioned "Exhibit C^3 for Complainant," the mortgage secondly mentioned "Exhibit C^4 for Complainant." I have also seen and inspected three receipts for insurance premiums paid by the complainant, as set out in said bill, and have taken the deposition of Edmund W. Kingsland, Junior, the assistant secretary of the complainant, in reference to said insurance premiums, which deposition is hereto annexed; I have marked said receipts respectively Exhibits C^5, C^6, and C^7 for Complainant; I report that there is due to the complainant on said bonds, mortgages, and insurance premiums, for principal and interest
30 on this day, the sum of two thousand three hundred and seventy-six dollars and eighty-one cents, as by the schedules hereto annexed will more fully appear.

The complainant's solicitors produced before me two certificates of search made and procured by them; the first was made by the complainant in the office of the clerk and register of Hudson County, and is marked "Exhibit C^8 for Complainant;" the other was made by the clerk of the supreme court of New Jersey, and is marked "Exhibit C^9 for Complainant. The searches were marked with the certificates of the solicitors, showing that they have incurred an expense of thirty-three dollars in making and obtaining the same; Schedule No. 4 hereto annexed contains an account of said expenses. In my opinion the searches were necessary for the proper foreclosure of the mortgages.

Respectfully submitted this sixth day of May, eighteen hundred and eighty-four.

EARLE INSLEY,
Master in Chancery.

31

Schedule No. 1.

Bond dated January 19, 1863, by Michael Nugent to the complainant, in the penal sum of sixteen hundred dollars, conditioned for the payment of eight hundred dollars on January 1, 1864, with interest at the rate of seven per cent. per annum (which bond is marked "Exhibit C[1] for Complainant"), secured by mortgage made by Michael Nugent and wife and Eliza McCormick to the complainant, as set out in the bill of complaint (which mortgage is marked "Exhibit C[2] for Complainant")	$800 00
Interest on said bond from July 1, 1876, according to endorsements on the bond, at seven per cent. per annum, 7 years 310 days	439 56
Total due on first bond and mortgage	$1,239 56

Schedule No. 2.

Bond dated July 13, 1869, by Michael Nugent and Elizabeth, his wife, and Eliza McCormick, to the complainant, in the penal sum of fourteen hundred dollars, conditioned for the payment of seven hundred dollars on July 1, 1870, with interest at the rate of seven per cent. per annum (which bond is marked "Exhibit C[3] for Complainant"), secured by mortgage made by Michael Nugent and wife and Eliza McCormick to the complainant, as set out in the bill of complaint (which mortgage is marked "Exhibit C[4] for Complainant")	700 00
Interest on said sum of $700 from July 1, 1876 to date, 7 years 310 days (according to endorsements on bond), at 7 per cent. per annum	384 61
Total amount due on second bond and mortgage	1,084 61

32

Schedule No. 3.

Insurance premium paid by the complainant January 5, 1881, as appears by the deposition annexed	16 00
Interest on $16 from January 5, 1881, to date, 3 years 122 days, at six per cent. per annum	3 20
Insurance premium paid by the complainant December 19, 1881, as appears by the deposition annexed	16 00
Interest on $16 from December 19, 1881, to date, 2 years 139 days, at six per cent. per annum	2 28
Insurance premium paid by the complainant December 21, 1882, as appears by the deposition annexed	14 00
Interest on $14 from December 21, 1882, to date, 1 year 137 days, at six per cent. per annum	1 16
Total amount of insurance premiums and interest	52 64

33 Recapitulation.

Principal and interest due on 1st mortgage	$1,239 56
" " " 2nd "	1,084 61
Insurance premiums and interest	52 64
Total amount due complainant	$2,376 81

Schedule No. 4.

Search by complainant's solicitors, marked "Exhibit C" for Complainant"	30 00
Search by clerk of N. J. supreme court, marked "Exhibit C[9] for Complainant"	3 00
Total amount of complainant's expenses for searches	33 00

May 6, 1884.

EARLE INSLEY, *M. C. C.*

34 In Chancery of New Jersey.

Between THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY, Compl't, *and* MICHAEL NUGENT *et al.*, Def'ts. } On Bill to Foreclose.

Examination of witnesses in the above-entitled cause, taken before me, Earle Insley, one of the masters of said court, & at my office in Jersey City, on the seventh day of May, eighteen hundred and eighty-four, in the presence of Bentley & Hartshorne, solicitors of the complainant.

Edmund W. Kingsland, Junior, a witness produced on the part of the complainant, being duly sworn, says:

I am the assistant secretary of the Provident Institution for Savings in Jersey City, the complainant in this cause. I am well acquainted with all the transactions of the complainant in connection with the bonds and mortgages held by it. In the month of January, 1881, the insurance on the buildings situated on the premises covered by the mortgages sought to be foreclosed by this suit expired, and the owner of the premises neglected and refused to reinsure the
35 same.

The complainant, in order to have the insurance continued, was compelled to pay the premium, and has continued to do so since that time.

The dates and amounts of the premiums paid are:

January 5, 1881	16 00
December 19, 1881	16 00
December 21, 1882	14 00

The witness being shown receipts marked respectively "Exhibits C[5], C[6], and C[7] for Complainant, says: Those are the receipts re-

ceived by the complainant for the premiums paid. All of the insurance procured was necessary for the protection of the complainant's interest. No part of the premiums or the interest thereon has ever been paid to the complainant.

E. W. KINGSLAND.

Sworn & subscribed before me, this 7th day of May, 1884, at Jersey City.

EARLE INSLEY,
Master in Chancery of N. J.

36 [Endorsed:] In chancery of N. J. Between The Provident Institution for Savings in J. C., compl't, and Michael Nugent *et al.*, def'ts. Master's report. Bentley & Hartshorn, sol'r-. Master's fees: Making report, 67; drawing report, 5 fol., 70; drawing sched., 8 fol., 80; deposition, 4 fol., 80; swearing 1 witness, 10; marking 9 exhibits, 90; —, 3.97. Earle Insley, M. C. C. Filed June 17, 1884.

37 To his honor Theodore Runyon, chancellor of the State of New Jersey:

Humbly complaining, showeth unto your honor, your orator, The Provident Institution for Savings in Jersey City, a body corporate of New Jersey, that on or about the nineteenth day of January, in the year one thousand eight hundred and sixty-three, Michael Nugent, of the city of Jersey City, in the county of Hudson and State of New Jersey, became and was justly indebted unto your orator in the sum of eight hundred dollars, and being so indebted the said Michael Nugent, in order to secure the payment of the said sum of money, with interest, did make and execute, under his hand and seal, and deliver unto your orator a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of sixteen hundred dollars, lawful money of the United States, with a condition thereunder written that if the said Michael Nugent, his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto your orator, its successors or assigns, the just and full sum of eight hundred dollars, lawful money as aforesaid, on the first day of January, in the year of our Lord one thousand eight hundred and sixty-four, with interest on the same at and after the rate of seven per cent. per annum, the first interest to be paid on the first day of July then next, and semi-annually thereafter on the first days of January and July in each and every year, until the principal should be paid, without any fraud or other delay, then the said obligation should be void; otherwise to remain in full
38 force and virtue, as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear.

And your orator further shows that the said Michael Nugent and Elizabeth, his wife, and Eliza McCormick, in order to secure the payment of the said sum of money above mentioned, together with the interest thereon, executed and delivered unto your orator a certain indenture of mortgage, bearing date the same day and year first

aforesaid, made by the said Michael Nugent and Elizabeth, his wife, and Eliza McCormick, of the first part, to your orator, of the second part, whereby the said part- of the first part did grant, bargain, sell, alien, convey, and confirm unto the said party of the second part, its successors and assigns, all that certain lot, piece, or parcel of land and premises situate, lying, and being in Jersey City, and in the late sixth ward of said city, in the county of Hudson and State of New Jersey, being the lot of land known and distinguished on a certain map of property of Cornelius Van Vorst, now deceased, made by Joseph F. Bridges, surveyor, dated in the year eighteen hundred and thirty-five, and filed in the clerk's (now register's) office of Hudson county as lot numbered fourteen (14), in block number sixty-three (63), fronting on the north side of Railroad avenue, being twenty-five (25) feet in width front and ninety-six feet and four inches (96 ft. 4 in.) on the westerly side, and ninety-nine feet six inches
39 on the easterly side, together with all and singular the tenements, hereditaments, and appurtenances, reversions, remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, use, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part- of the first part therein; to have and to hold the said granted and described premises, with the appurtenances, unto the said party of the second part, its successors and assigns, to its and their own proper use, benefit, and behoof, forever: Provided always, That if the said party of the first part thereto, their heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto your orator, its successors or assigns, the said sum of money mentioned in the condition of the said bond, with the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage, and the estate thereby granted, should cease, determine; and be void.

And your orator further show- that after the execution of the said indenture of mortgage the same was in due form of law acknowledged by the said Michael Nugent and Elizabeth, his wife, and Eliza McCormick before a master of this court, and duly recorded in the office of the clerk (now register) in and for the said county of Hudson in book 28 of Mortgages, page 140, on the twentieth day of January, in the year one thousand eight hundred and sixty-three, as by the several certificates endorsed on the said indenture of mortgage more fully appears.

40 That on or about the thirteenth day of July, eighteen hundred and sixty-nine, the said Michael Nugent and Elizabeth, his wife, and Eliza McCormick, being further indebted to your orator in the sum of seven hundred dollars, in order to secure the payment of the same, did make and execute under their hands and seals and deliver unto your orator their bond, dated on the last-mentioned day, in the penal sum of fourteen hundred dollars, with a condition thereunder written that if the said obligors, their heirs, executors, or administrators, should pay unto your orator, its successors or assigns, the just and full sum of seven hundred dollars, lawful money of the United States, on the first day of July, in the year eighteen hundred

and seventy, and interest thereon, to be computed from the date thereof at and after the rate of seven per cent. per annum, and to be paid on the first day of January then next and semi-annually thereafter on the first days of July and January in each and every year, until the principal should be paid, without any fraud or other delay, then said obligation to be void, otherwise to remain in full force and virtue. That in order to secure the payment of said
41 bond with interest, the said Michael Nugent and Elizabeth, his wife, and Eliza McCormick executed under their hands and seals and delivered to your orator a certain indenture of mortgage, bearing even date with said last-mentioned bond, whereby the said Nugent and wife and Eliza McCormick did grant, bargain, sell, convey, and confirm unto your orator, its successors and assigns, forever, all of the same premises above described, together with the appurtenances, with a provision that if the said mortgagors, their heirs, executors, or administrators, should pay unto your orator, its successors or assigns, the sum of money mentioned in said last-named bond, with interest, at the time and in the manner in said bond mentioned, then said mortgage to be void.

That said mortgage was in due form of law acknowledged by the said Michael Nugent and Elizabeth, his wife, and Eliza McCormick before a master of this court, and on the thirteenth day of August, eighteen hundred and sixty-nine, recorded in book 67 of Mortgages for Hudson county, page 352, as by the certificates endorsed therein will more fully appear, both of which said
42 bonds and both of said mortgages are in your orator's possession ready to be produced and proved.

That said mortgaged premises are now in the possession of John Bell, Patrick Griffen, and James Trumbull, who claim to be entitled to such possession by virtue of some verbal or written agreement with said Michael and Elizabeth Nugent and Eliza McCormick; but your orator insists that if they have any interest in said premises or any right to occupy the same, such rights are subject to your orator's said mortgages.

That each of said mortgages contained an agreement that the said mortgagors would keep the buildings erected or to be erected upon said mortgaged premises insured against loss or damage by fire, by insure's, and in an amount approved by your orator, in default thereof it would be lawful for your orator to effect such insurance, and the premium or premiums paid therefor should be a lien on said mortgaged premises added to the amount of said bonds and secured by said mortgages, with interest at seven per cent. per annum.

That the said mortgagors have not kept their said agreement regarding insurance, but that, on or about the fifth day of Jan-
43 uary, eighteen hundred and eighty-one, said insurance expiring at or near that time, and the said mortgagors neglecting and refusing to reinsure the same, your orator effected such insurance for one year in the Hudson Insurance Company in the sum of twelve hundred dollars, and paid therefor on the last-named day a premium of sixteen dollars. That on or about the nineteenth day of December, eighteen hundred and eighty-one, said insurance again

expiring at or near that time, and said mortgagors neglecting and refusing to reinsure the same, your orator effected such insurance for one year in the Hudson Insurance Company in the sum of twelve hundred dollars, and paid therefor on the last named-day a premium of sixteen dollars. That on or about the twenty-first day of December, eighteen hundred and eighty-two, said insurance again expiring at or near that time, and the said mortgagors neglecting to reinsure the same, your orator effected the insurance for one year in the Hudson Insurance Company in the sum of twelve hundred dollars, and paid therefor on the last-named day a premium of fourteen dollars. Which said several premiums paid by your orator, with interest thereon from the times of their respective pay-
44 ments, your orator claims to be liens on said mortgaged premises added to the amount of said bonds and secured by said mortgages.

That at the time of the making of the above-named mortgages the said Michael Nugent owned a portion of said mortgaged premises in fee-simple, and in the balance of said premises the said Eliza McCormick had a life estate, and the remainder was in the said Michael Nugent. Since the making of your orator's mortgage Eliza McCormick died, and Michael Nugent thereupon became the owner of all of said mortgaged premises in fee-simple.

Amended. [And your orator further shows that the Mayor and Aldermen of Jersey City, a municipal corporation of the State of New Jersey within the territorial jurisdiction of which said mortgaged premises are situated, have supplied water upon said premises, at the request of the owners or tenants thereof, from the water pipes used by the said corporation in the distribution of the Passaic water through said city, which water so supplied was used upon the said premises by the owners or tenants thereof continuously during the year eighteen hundred and seventy-one, and during every subse-
45 quent year to the time of beginning this suit.

That said corporation, acting through its board of public works, has attempted to assess upon said premises certain impositions, called water rents, for the use of said water as aforesaid, which assessments or impositions were made at or about the dates and for the sums following, viz:

May 1st, 1871.	For the use of said water for the then ensuing year	20 67
May 1st, 1872.	For the use of said water for the then ensuing year	20 67
May 1st, 1873.	For the use of said water for the then ensuing year	28 67
May 1st, 1874.	For the use of said water for the then ensuing year	28 67
May 1st, 1875.	For the use of said water for the then ensuing year	18 67
May 1st, 1876.	For the use of said water for the then ensuing year	22 67
May 1st, 1877.	For the use of said water for the then ensuing year	20 67

May 1st, 1878.	For the use of said water for the then ensuing year	16 67
May 1st, 1879.	For the use of said water for the then ensuing year	16 67
May 1st, 1880.	For the use of said water for the then ensuing year	15 85
May 1st, 1881.	For the use of said water for the then ensuing year	20 85
May 1st, 1882.	For the use of said water for the then ensuing year	20 85
May 1st, 1883.	For the use of said water for the then ensuing year	20 85

Upon all water rents assessed on and prior to the first day of May, eighteen hundred and seventy-nine, the said city assesses and
46 claims interest at the rate of ten per cent. per annum on each year's water rent from the twentieth day of December, in the year in which such water rent was assessed, to the date of payment, and upon all water rents assessed on and since the first day of May, eighteen hundred and eighty, said city claims a penalty of three per cent. upon each year's water rent, and also interest at the rate of seven per cent. per annum on each year's water rent from the twentieth day of December, in the year in which the water rent was assessed.

Your orator, to the time of beginning this suit, has never been in possession of said premises nor used said water, nor in any manner given its consent either expressly or impliedly to the use of said water upon said premises, nor to the lev[y]ing of the said assessments.

All of which assessments for water rents with said penalties and interest said corporation claims to be liens upon said mortgaged premises prior to the lien of your orator's mortgages, by virtue of the powers alleged by said corporation to have been conferred upon it by two acts of the Legislature of the State of New Jersey, one entitled "An act to authorize the construction of works for
47 supplying Jersey City and places adjacent, with pure and wholesome water," approved March 25th, 1852, and the other entitled "An act to reorganize the local government of Jersey City," approved in March in the year 1871.

All of said water rents, with said penalties and interest, were levied or assessed by said corporation in pursuance of certain rules adopted by its board of public works, a copy of which rules as last revised and corrected is annexed hereto and made part of this bill.

These rules continue in force from year to year until changed by the board of public works.

No notice or opportunity for hearing was given before the levying of any of the said assessments to the owners or occupants of the property assessed, or to your orator, except a general notice published in the newspapers in Jersey City, shortly before the first day of May in each year, stating that the water rents levied for that year would be due and payable on that day, and stating the penalty for

non-payment. No adjudication or resolution was made by the board of public works for the assessment of any of said water rents
48 assessed as above stated against the said property except the resolution adopting the rules aforesaid; but the employees of the said board annually make a charge or entry for the use of said water in accordance with said rules in the books of the water department, upon survey of the property made and reported by other employees of the said board, and when so made and entered on the books of the water department said water rents were considered as levied or assessed without any hearing, adjudication, resolution, or ordinance by any board or other tribunal whatsoever.

Your orator charges that said mortgaged premises are not sufficient in value to pay the amounts of municipal taxes and assessments, other than water rents, which are prior liens to your orator's mortgage and satisfy your orator's mortgage debt.

Your ortor charges and insists that its said mortgages were recorded before any of said supposed assessments were made, and it is advised and insists that neither said act of incorporation nor any other law confers power to levy said water rents
or any of them upon said premises in such manner as to make
49 them, or any of them, a prior lien or any lien thereon as against said mortgages so made and recorded prior to the time of such levy, and that such parts of said acts as purport to confer such power attempt to deprive your orator of its property in said mortgaged premises without due process of law, and upon that ground, and upon other grounds, are in violation of the Constitution of the United States and of the State of New Jersey, and are void.]

50 And your orator further shows that all of the principal money mentioned in and secured by the said bonds and mortgages, with large arrears of interest, still remains due and unpaid to your orator, whereby the said mortgage and the estate thereby granted have become absolute in your orator and its successors.

And your orator further show that the said Michael Nugent and Elizabeth his wife, and Eliza McCormick, John Bell, Patrick Griffen, and James Trumbull, since the execution of your orator's said mortgage, ha- possessed and enjoyed, and do still possess and enjoy, the said mortgaged premises, and have always received, and still receive, the rents, issues, and profits thereof; and that the said premises are a scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid, and that it or some other person or persons for it has frequently and in a friendly manner applied to the defendants hereinafter named, or one of them, and requested them or one of them to pay and discharge the said principal and interest moneys so due to your orator on the said bond and mortgage, and your orator well hoped that they would have complied with such reasonable requests, as in justice and equity they ought to have done.

In tender consideration whereof, and forasmuch as your orator ha- not a complete remedy in the premises, at the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the

said principal and interest moneys without the aid of this honorable court, where matters of this nature are particularly cognizable and relievable, to the end, therefore, that the said defendants may, upon their respective oaths, true, full, and perfect answers make to all and singular the premises, as fully as if here repeated, and they thereto particularly interrogated, and that they or some of them may be decreed to pay to your orator the said principal sum so due on the said bond and mortgage and the interest due and to grow due thereon, with your orator's costs and charges in this behalf sustained, and the amount paid for insurance with interest by a short day, to be appointed by this honorable court; and that in default thereof the said defendants, and all persons claiming or to claim under them, or any of them, may be foreclosed of and from all right, title, and equity of redemption in and to the said mortgaged premises and every part thereof, with the appurtenances, and may deliver unto your orator the possession thereof, and all deeds, demises, and muniments of title relating to or concerning the same; or that the said mortgaged premises, with the appurtenances, may be sold, and that out of the moneys arising from such sale your orator may be paid the said principal, interest, and costs, and the amounts paid by your orator for insurance as aforesaid, with interest.

51 And that your orator may have such further and other relief in the premises as the case may require, and as shall be agreeable to equity and good conscience. May it please your honor, the premises considered, to grant unto your orator a writ or writs of subpœna issuing out of and under the seal of this honorable court, to be directed to the said Michael Nugent and Elizabeth his wife, John Bell, Patrick Griffen, James Trumbull, and the mayor and aldermen of Jersey City therein and thereby commanding them, on a certain day and under a certain penalty, to be and appear before your honor in this honorable court, then and there to answer the premises, and to stand to, abide by, and perform such decree therein as to your honor shall seem meet and agreeable to equity and good conscience. And your orator will ever pray, &c.

BENTLEY & HARTSHORNE,
Solicitors and of Counsel with Complainant.

52 [Endorsed:] In chancery of New Jersey. Between The Provident Institution for Savings in J. C., comp't, and Michael Nugent *et ux. et al.*, def'ts. Amended bill to foreclose. Bentley & Hartshorne, sol'r. Filed May 20, 1884.

53 *Tariff of Rates and Regulations for the Use of Passaic Water; also, Rules Regulating the Plumbing of Houses and the Tapping of Sewers.*

Adopted by the Board of Public Works, April 18th, 1881.

R. H. McFarland, printer and stationer, 298 Newark avenue, Jersey City. 1881.

54 Notice to Consumers.

Water rents (except for measured water) are payable annually in advance, on the first day of May in each year.

On the first day of July following a penalty of three per cent. will be added to all unpaid water rates.

Interest at the rate of seven per cent. per annum will be added to all unpaid water rents; such interest to be computed from the 20th day of December in each year.

Interest on all arrears, prior to May, 1880, will be at the rate of 10 per cent. per annum from the 20th of December in the year the water rents are due and payable.

Measured water bills are payable quarterly, on the first day of February, May, August, and November, except when, by consent of the board, they are made payable monthly, viz., on the first day of each month.

Interest at the rate of ten per cent. per annum, to commence sixty (60) days after the end of each month or quarter, will be added to all unpaid bills for measured water.

Office hours: From 9 a. m. to 4 p. m., except Saturdays, when office will be closed at 3 p. m.

For front buildings.	1 story.	1½ story.	2 story.	2½ story.	3 story.	3½ story.	4 story.	4½ story.	5 story.
Less than 15 feet in width	$5 70	$6 40	$7 15	$7 85	$8 55	$9 25	$10 00	$10 70	$11 40
15 feet and under 20 feet in width	6 40	7 15	7 85	8 55	9 25	10 00	10 70	11 40	12 15
20 feet and not exceeding 25 feet in width	7 15	8 35	9 50	10 45	11 40	12 35	13 30	14 25	15 20
Exceeding 25 feet in width and not exceeding 30 feet	8 55	10 00	11 40	12 35	13 30	14 25	15 20	16 15	17 10
Exceeding 30 feet in width and not exceeding 40 feet	11 40	12 85	14 25	15 70	17 10	18 55	19 95	21 40	22 80
Exceeding 40 feet in width and not exceeding 50 feet	12 85	14 95	17 10	18 75	20 45	22 10	23 75	25 40	27 10
Exceeding 50 feet in width and not exceeding 60 feet	15 70	17 85	19 95	21 65	23 30	24 95	26 60	28 30	29 95
Exceeding 60 feet in width and not exceeding 70 feet	18 55	20 75	22 80	24 50	26 15	27 80	29 45	31 15	32 80
Exceeding 70 feet in width and not exceeding 80 feet	21 40	23 55	25 65	27 35	29 00	30 65	32 30	34 00	35 65
Exceeding 80 feet in width and not exceeding 90 feet	24 25	26 40	28 50	30 20	31 85	33 50	35 15	36 85	38 50
Exceeding 90 feet in width and not exceeding 100 feet	27 10	29 25	31 35	33 05	34 65	36 35	38 00	39 70	41 35
Exceeding 100 feet in width and not exceeding 110 feet	29 45	31 60	33 75	35 40	37 05	38 75	40 40	42 05	43 70
Exceeding 110 feet in width and not exceeding 120 feet	31 85	33 95	36 10	37 75	39 45	41 10	42 75	44 40	46 10
Exceeding 120 feet in width and not exceeding 130 feet	34 20	36 35	38 50	40 45	41 80	43 50	45 15	46 80	48 45
Exceeding 130 feet in width and not exceeding 140 feet	36 60	38 75	40 85	42 50	44 20	45 85	47 50	49 20	50 85
Exceeding 140 feet in width and not exceeding 150 feet	38 95	41 10	43 25	44 90	46 55	48 25	49 90	51 55	53 20
Exceeding 150 feet in width and not exceeding 160 feet	40 85	43 50	45 15	46 80	48 45	50 15	51 80	53 45	55 10
Exceeding 160 feet in width and not exceeding 170 feet	42 75	45 35	47 00	48 70	50 35	52 00	53 70	55 35	57 00
Exceeding 170 feet in width and not exceeding 180 feet	45 10	47 25	48 90	50 60	52 25	53 90	55 60	57 25	58 90
Exceeding 180 feet in width and not exceeding 190 feet	46 55	49 20	50 80	52 50	54 15	55 80	57 50	59 15	60 80
Exceeding 190 feet in width and not exceeding 200 feet	48 45	51 10	52 70	54 40	56 05	57 70	59 40	61 05	62 70
Exceeding 200 feet in width and not exceeding 210 feet	49 90	52 50	54 15	55 80	57 50	59 15	60 80	62 50	64 15
Exceeding 210 feet in width and not exceeding 220 feet	51 30	53 90	55 60	57 25	58 90	60 60	62 25	63 90	65 55
Exceeding 220 feet in width and not exceeding 230 feet	52 75	55 35	57 00	58 70	60 30	62 00	63 65	65 30	67 00
Exceeding 230 feet in width and not exceeding 240 feet	54 15	56 80	58 40	60 10	61 75	63 40	65 10	66 75	68 90
Exceeding 240 feet in width and not exceeding 250 feet	55 60	57 25	59 85	61 50	63 20	64 85	66 50	68 20	69 85

Regular Rates.—Continued.

For rear buildings.*	1 story.	1½ story.	2 story.	2½ story.	3 story.	3½ story.	4 story.	4½ story.	5 story.
Less than 15 feet in width	$3 80	$4 30	$4 75	$5 20	$5 70	$6 20	$6 65	$7 15	$7 60
15 feet and under 20 feet in width	4 30	4 75	5 20	5 70	6 20	6 65	7 15	7 60	8 10
20 feet and not exceeding 25 feet in width	4 75	5 55	6 35	6 95	7 60	8 25	8 85	9 50	10 15
Exceeding 25 feet in width and not exceeding 30 feet	5 70	6 65	7 60	8 25	8 85	9 50	10 15	10 75	11 40
Exceeding 30 feet in width and not exceeding 40 feet	7 60	8 55	9 50	10 45	11 40	12 35	13 30	14 25	15 20
Exceeding 40 feet in width and not exceeding 50 feet	8 55	9 95	11 40	12 50	13 65	14 65	15 85	16 95	18 05

Mansard or French roofs, and basements furnished or occupied and used for kitchen or laundry purposes, shall each count as one story.

* Rear buildings are those having a building on same lot fronting street.

57 Annual Water Rents.

Water rents on all buildings must be paid in advance as rated in the foregoing lists where the water is introduced or used. Where no connections are made with distributing pipes two-thirds of the foregoing rates will be charged on all buildings fronting upon any street, avenue, lane, or alley in which distributing pipes are laid in front of such premises; provided said buildings are located within 100 feet of street line.

Extra Rates.

All claims for deduction for use of Passaic water charged at extra rates must be made on or before August 1st in the year the water rents become due.

Baths.—Private, $3.00 each per annum. In dwelling-houses occupied by one family only an extra bath-tub will be allowed without additional charge.

Baths in public houses, hotels, boarding-houses, barber shops, bathing establishments, and in all public institutions, and known as public baths, $5.00 each per annum.

Bakeries, one cent per barrel per annum for each barrel of flour used.

Barber-shops, where Passaic water is introduced on premises or used, $3.00 to $5.00 per annum.

Bars and saloons, $5.00 to $15.00 each per annum.

Fountains, in yard, with $\frac{1}{16}$ inch jet, $7.00 per annum; with $\frac{1}{8}$ inch jet, $15.00 per annum.

Fountains will only be allowed to run from April 1st to November 1st in each year.

58 Greenhouses, $4.00 per 1,000 square feet of surface per annum, in addition to regular rates for vacant property for land not conveyed by greenhouses.

Horse troughs and hydrants on sidewalks, $20.00 each per annum. To be used only from April 1st to December 1st in each year. Rent to be paid in advance each year, before the water will be turned on. All horse troughs and hydrants must be connected with sewer, and must have separate connection from house service.

Hotels and Boarding-houses, in addition to regular building rates, $1.00 per annum for each bed over 6.

Markets.—Meat, fish, and oyster stalls, each $3.00 per annum.

Milk stores, $3.00 each per annum.

Pipe Tax.—The water rent for vacant lots situated upon streets, avenues, lanes, or alleys, through or into which distributing pipes are laid, or shall be laid, shall be at the rate of nine cents for each 100 square feet of surface lying within 100 feet of the street line.

Photograph galleries, $5.00 to $10.00 each per annum.

Street washers and hand hose, for washing sidewalks or windows and sprinkling streets, $3.00 each per annum. When used for other purposes an extra assessment will be charged. A special permit must be obtained.

Stables.—In addition to regular building rates, $1.00 per annum for each horse or cow over two (2).

Steam Engines and boilers, $4.00 per annum for each horse power.

Steam-heating apparatus, from $5.00 to $50.00 per annum.

Slaughter-houses, rendering establishments, and all other buildings requiring a large quantity of water, will be assessed in proportion to quantity of water used.

59 Soda fountains, beer fountains, where Passaic water is introduced or used, $3.00 each per annum; with extra jet, $10.00 each per annum.

Steamboats and shipping will be subject to special rates.

Street Sprinkling.—For each cart, $15.00 per month will be charged. Each and every cart using Passaic water for sprinkling streets will have owner's name and number of cart painted on each side of said cart in a conspicuous place in large letters; no water will be furnished by the board of public works until a permit be procured for the same; all permits must be paid for in advance.

Special rates will be charged for manufactories, restaurants, soda water manufactories, breweries, laundries, water power machines, and for any other kind of business requiring a large amount of water. Such rates to be in proportion to estimated quantity of water used.

Tenement buildings, in addition to building rates, $2.00 per annum for each family over two (2).

Water closets and urinals, self-closing, in private houses, $2.00 each per annum. Not self-closing, in private houses, $15.00 each per annum; self-closing, public, $4.00 each per annum; dwelling-houses, occupied by one family only, will be allowed an extra water closet and urinal (self-closing) without additional charge. Only self-closing water closets and urinals will be allowed hereafter.

Water boats, &c.—Water supplied to water boats, steamboats, and shipping from public dock will be charged at the rate of $1.50 per 1,000 cubic feet. When less than 1,000 cubic feet is used, the sum of $1.50 will be charged unless otherwise provided.

60 Measured Water.

At the option of the board of public works meters will be used and the water charged for either at the foregoing rates or at the rate of one dollar and fifty cents per one thousand cubic feet where the quarterly consumption is less than 5,000 cubic feet, or one dollar and twenty-five cents per 1,000 cubic feet when a larger quantity is used.

Monthly Rates.

When, at the option of the board, bills for measured water are made payable monthly, and the consumption is less than 100,000 cubic feet per month, $1.15 per 1,000 cubic feet.

Between 100,000 and 4,000,000 cub. ft. per month	$1.10 per 1,000 cub. ft.
Between 1,000,000 and 1,500,000 cub. ft. per month	.90 per 1,000 cub. ft.

Between 1,500,000 and 2,500,000 cub. ft. per month ..... 80 80 per 1,000 cub. ft.
Between 2,500,000 cubic feet and over ..... 75 per 1,000 cub. ft.

Meters will be removed at the option of the board, and regular building rates charged whenever the quantity of water used will not warrant their continuance.

The rates for tug-boats, when using not to exceed 5,000 gallons per day, shall be $8.00 per month; over 5,000 gallons per day, at the rate of $12.00 per month; for steamers, one cent per ton per day. Custom-house measurement will be charged, always payable in advance.

Resolved, That hereafter all new meters must be put in by order of this board, and at the expense of the consumer or owner of the property, and under the direction and supervision of the board of public works.

Adopted by the board of public works April 4th, 1881.

61 *Water Taps and Sewer Connections.*

Prices for Water Taps.

¾ inch, $5.00; 1 inch, $6.00; 1½ inch, $7.50; 2 inch, $10.00; 4 inch, $15.00; 1½ inch, $20.00; 2 inch, $30.00.

No permit will be granted to do plumbing work in any house, or for tapping any water pipe for the purpose of introducing water to any building to be erected on any lot, unless all arrears are paid and cancelled on the books in the office of this board; and it will be the duty of all plumbers doing work under the authority of the board to ascertain, before asking for such permit either for extension of water or tapping of the water pipes, if such arrears are paid on the books in this office; any violation of this rule will subject the plumber so violating to a fine, and be just cause for revoking his license.

A special permit in writing, signed by the chief engineer of the board of public works, must be obtained for all taps larger than 2 inches. Said permit must be filed by the plumber with the permit clerk.

Prices for Tapping Sewers.

6 inch, $3.00; 8 inch, $5.00; 9 inch, $6.00; 10 inch, $10.00; 12 inch, $12.00. Larger sizes, special rates.

A special permit, signed by the chief engineer, must be obtained for all connections larger than six inches. Said permit to be filed in the office of the permit clerk.

62 Street Sprinklers.

All persons who shall obtain permits to sprinkle streets shall conform to the following rules and regulations:

1st. The tin sprinkler attached to each cart shall conform in every respect to the pattern kept in the office of the chief engineer

of the board of public works, and no other kind will be permitted to be used.

2d. The name and residence of each person licensed to sprinkle streets shall be painted on both sides of the cart in black letters of not less than two (2) inches in length on white ground.

3d. No permit will be granted to any person not a resident of Jersey City.

4th. Each sprinkling cart shall be provided with a sound and proper piece of hose to conduct the water from the fire hydrant to the cart, and such hose shall always be kept in order and free from holes.

5th. Each person obtaining a permit for sprinkling streets shall keep the hydrant allotted to his use closed, except when obtaining water for use, and shall be responsible for any damage that may result from the use or abuse of it while in his charge, provided such damage shall not have been occasioned by others than those in the employ of such person.

6th. Every person who shall obtain a permit shall pay to the board of public works at the rate of fifteen dollars per month for each cart (payable monthly in advance), said permit to be used only for the cart for which it was issued for, and to be shown to
63 any police officer of Jersey City or inspector from this board when required.

7th. Any person violating any of the above rules and regulations will, at the discretion of the board of public works, be subject to a fine of $25.00, and, in extreme cases, have his permit revoked.

Rules, Regulations, and Penalties respecting the use of Passaic Water.

1. No tenant or owner will be allowed to supply water to any other persons or families. If so doing the supply will be stopped, and the amount of payment forfeited, and a fine of $10 will be imposed.

2. No addition or alteration whatever in or about any conduit pipe or water cock shall be made or caused to be made by persons taking water without notice thereof being previously given to and permission had in writing from the board.

3. All persons taking water must keep their own service pipes, stop cocks, and apparatus, including the tap in the street, in good repair and protected from frost, and shall prevent all waste of water.

4. Street washers and hand hose must be used only between the hours of 5 and 8 a. m. and 5 and 8 p. m. from the first of April to the 15th of October; and if found out of order or leaking, or if converted into jets, or suffered to run when not used, the supply will be cut off without previous notice. All persons using a hose either in front or rear of premises, from a hydrant or faucet connections, without first obtaining a permit, will be subject to a fine of $10.00 for each and every offense. Fine for using street sprinkler,
64 water for washing windows, door steps, sidewalks or streets at hours not permitted in the rules and regulations, five (5) dollars.

5. No hydrant will be allowed on the sidewalks or in the front or

rear of premises without special permission of the board, and neither hydrants nor any other apparatus must be allowed to run when not in actual use; and if the drip or waste from any such apparatus is allowed to freeze on the street or sidewalk the supply will be cut off.

6. Applications for water must state fully and truly all purposes for which it is required, and at all times parties must frankly and without concealment answer all questions put to them relating to its consumption.

In case of misrepresentation or use of water not mentioned in the permit, or of waste of water, the board of public works shall have the right to shut off the supply of water until the board shall be satisfied that there will be no further cause of complaint, and that the party has paid such fines and additional charges as the board may impose, and five dollars for shutting off and five dollars for turning on the water.

7. The commissioners and every person delegated by them for that purpose shall have access at all reasonable hours to all parts of premises or vessels where Passaic water is used to inspect the condition and use of all plumbing.

8. All persons are forbidden to open any fire hydrant, or to use water therefrom, without permission of the board of public works (except in case of fire), under a penalty of $10.00.

9. The fine for the infraction of any of the above rules, when not otherwise specified, shall be five (5) dollars, and, in extreme cases, at the option of the board.

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Shutting off Water.

Attention is called to the following resolutions passed by the board of public works September 8, 1874:

Whereas it is the practice of certain manufacturers to use the Passaic water supplied by the city, within the city limits, for manufacturing purposes, and without paying the city therefor any water rent or compensation thereby, without consideration, and at the expense of the tax payers of the city contributing to and enhancing the value of the merchanise they manufacture; and

Whereas it is ascertained that certain persons are being supplied with Passaic water at the docks to supply barges and boats therewith, and without paying for the same; and

Whereas such use of the water without compensation to the city is not only an abuse of the privilege or opportunity to use the water supplied at the expense of the tax payers, but it is an unjustifiable and shameful waste of water; and

Whereas such use of water being neither for domestic nor family use, nor for the purpose of health within the city, nor to extinguish fires, cannot claim a like consideration with the latter use of it, and presents a great injustice which should be remedied by such prompt measures as will prevent such further use and waste of the water; therefore,

Resolved, That the committee on water rates and assessments be,

and is hereby, authorized to shut off the supply of Passaic water from manufacturers and from boats and barges in each instance where it is used for manufacturing purposes without
66 compensation to the city, and where distributed and supplied by any person or persons from his or their supply to others, without first making compensation therefor to the city, and to prevent such a waste of the water by withholding its use from such manufacturers and from persons supplying others as aforesaid, in each instance where the water rents and charges for the water supplied and thus remain unpaid and in arrears; And provided, That said committee shall first give ten days' written notice to such manufacturers and other persons so using the Passaic water to pay the water rents and charges against them respectively for the supply and use of Passaic water, or the further supply of water will be shut off and its use thereafter withheld from them so long as such rents and charges remain unpaid; and, further,

Resolved, That the board of public works of Jersey City, as it may lawfully do under the provisions of the city charter, hereby adopts the foregoing resolution, with its preamble explanatory, and constitute it a by-law, rule, and regulation respecting its supply, distribution, and use of Passaic water in addition to the by-laws, rules, and regulations heretofore adopted for that purpose.

Rules for Plumbers and Masons.

Rules respecting Plumbers.

Section I.

1. No person, except the tappers employed by the board of public works, will be allowed, under any circumstances, to tap the distributing pipes, or insert stop cocks or ferrules therein, under penalty of fifty dollars for each offense.

67 2. No street, alley, or other public place shall be opened for the purpose of laying down any service pipe or doing any work, or making repairs in or about any service pipes or fixtures, without written permission from the permit clerk authorizing the same.

3. No permits will be granted to others than plumbers regularly licensed by the board to do the same. All persons doing plumbing work, whether new, or in extension, or addition, will be subject to a fine of $25.00, unless regularly licensed by the board to do the same, and a permit authorizing the work be first obtained from the permit clerk.

Section II.

Qualifications for License, Etc.

1. Every plumber applying for a license must be a citizen of the United States, residing and doing business in Jersey City, not less than twenty-one years of age, and he must furnish satisfactory evidence to the board that he is regularly educated to the business and in every way qualified to receive a license.

2. On receiving his license he shall record with the permit clerk his

actual place of business and the name under which said business is transacted, and it shall be his business to notify the permit clerk of any change in either immediately on the occurrence thereof. Removal from the city will act as a forfeiture of license. He shall have a sign, bearing his name and business, publicly exposed at the premises occupied by him for the purpose of carrying on such business.

68 3. At the time of receiving his license the party shall execute and deposit in the office of the permit clerk a bond, with one or more sureties, to be approved by the president of the board of public works, in the sum of one thousand dollars, conditioned that he will indemnify and save harmless the mayor and aldermen of Jersey City of and from all accidents and damages consequent thereupon, for or by reason of any opening in any street, lane, avenue, alley, or court made by him or by those in his employment for the purpose of putting down or inserting any service pipe or pipes, hydrant, or other apparatus for the introduction or use of Passaic water, or for making any connection with any public or private sewer, or for any other object or purpose whatever; and shall also replace and restore the street and pavement over every such opening to as good state and condition as he found it, and keep and maintain the same in good order, to the satisfaction of the street commissioner of Jersey City, for the space of six months thereafter, and also make true and faithful reports to the board of public works of Jersey City of the situation, size, number, and character of all pipes, hydrants, washers, water closets, baths, and all other work or apparatus for conveying, containing, or consuming Passaic water made, fixed, or inserted by him, or removed under his direction, within five days after the same shall be completed, and shall pay to the said mayor and aldermen, their successors or assigns, any fines or penalties incurred by neglect of rules, or by order of the board of public works.

Section III.

Rules relating to Permits, Materials, and Workmanship.

1. Plumbers applying for permits shall, before taking out the same, whether it be for the introduction of Passaic water, or for
69 the alteration or extension of the arrangements for supplying the same, state fully and truly the purpose for which said water is required; and should any additional use be at any time required, an extension permit must be obtained as hereinafter provided for.

All permits must be paid for at the time of application. No permits will be granted after 12 o'clock (noon) on Saturdays.

2. The permits for tapping the street main will be authority only for such new work connected therewith, specified in the application, and no permit will authorize anything not stated in application.

3. Extension permits must be obtained for the following plumbing work, when removed or put in buildings using, or expecting to use, Passaic water, viz., baths, water closets, urinals, hydrants, street washers, sinks, or faucets in bars for soda fountains, engines, or for any work for which an extra rate may be charged.

4. Special permits may be obtained in writing, signed by the chief engineer, or from the board of public works, for the following plumbing work, viz., taps in street mains, exceeding 2 inches in diameter, for service pipe other than extra strong "A A" pipe of full weight, for fountains, other than soda fountains, for horse troughs or drinking hydrants on sidewalks, or for hydrants in yard, either in front or rear of premises.

5. Notice must be left for the tapper, at the office of the permit clerk, by the plumber who is to lay down service pipe, fixing the time when the trench will be open ready for the tapper. This notice must be given at least twenty-four hours previous to the time fixed.

70 6. No licensed plumber will be allowed to transfer his permit to any other party, or sign for an unlicensed plumber, under a penalty for each and every offence of $10.00.

Section IV.

Opening and Paving Streets.

1. In opening streets that are paved the sand and paving stones taken therefrom must be kept separate from the earth in such a manner that on refilling the trench the other materials excavated may be first replaced, and the sand and paving have a corresponding depth with the rest of the street.

2. Paving over trenches must be completed in a good and workmanlike manner within forty-eight hours after the tapper shall have finished his work, and the same must be kept in order for the space of six months hereafter by the plumber.

3. In case of the neglect of the plumber to place such paving in good order, to the satisfaction of the street commissioner, and keep the same in good order as provided in the preceding rule, the same will be done by the street commissioner, and the expense thereof, together with a fine of $10.00, to be imposed for each offense, will be charged to the offending plumber, and the permit clerk is hereby authorized to suspend such plumber from acting under his license until such costs and fines are paid.

4. The above rule shall apply to the refilling of trenches as well as to repaving over the same.

5. In opening streets the materials excavated must be so deposited as to cause the least obstruction to public travel, and
71 the branch or excavation must not be left open at night except in case of necessity, when a lighted lantern shall be placed over such trench from twilight until daylight, and the trench shall be properly railed in so as to prevent accidents. A failure to comply with the above will subject the party offending to a fine of $10.00 for each offense.

6. The trench over and above the pipe for the accommodation of the tapper must be dug four feet square, and not less than six inches below the pipe, and all of the pipe required in each case must be laid and the trench left open for the inspection of the tapper before the tap is inserted.

7. When filling trenches the earth or sand shall be rammed or soaked with water from the commencement of the filling until completed, in order that all the materials taken out may be returned. In case of rock excavation no stone filling will be allowed; earth or sand must be used instead, and in no case shall the service pipe be laid in the same trench with a sewer connection, or any other work, without a special permit.

Section V.

Plumber's Report.

1. Plumbers fitting up apparatus for the use of Passaic water under authority of any permit issued by the board of public works, or its permit clerk, shall within forty-eight hours after the work shall have been completed fill up and return to the office of the board of public works, and deposit in a box provided to receive the same, a blank form of report, furnished for that purpose, showing all the arrangements, both new and old, for using Passaic water upon the premises, giving the lot, block, and street, number of premises, the name of the street on which said premises are located and such other particulars as the case may require. In case lot and street number cannot be obtained, the distance from the nearest street corner must be given.

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2. Each report must state the number and kind of permit authorizing the work.

3. A non-compliance with any one of the provisions of this section will subject the person so offending to a fine of ten (10.00) [dollars] for each offence, and a suspension of license until fine is paid.

4. Reports must conform to the following, which must be dated at the time work was completed, so as to enable the water assessor to charge to the premises any "extras" which may have been put in.

Report of Plumber's Work for Using Passaic Water.

This report must be returned within 48 hours after completion of work with a full and true statement of all work done, together with a report of all fixtures for use of Passaic water found on the premises mentioned.

Made by ——— ———, plumber, in the ——— building situated on —— side of —— street, for ——— ———, owner of lot No. ———, in block No. ———, city map, new street No. ———. Date of taking out permit ——— ———, No. ———. Tapping permit No. ———, extension permit No. ———. Size of building: ——— feet front, ——— stories high.

——— ——— ——— ———

——— ——— ——— ———

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Plumbers doing work under authority of any tapping or extension permit issued by Board of Public works will be required to report all work of every description done by them, together with a report of work made and fixed on said premises previous to any extension or alteration made under this permit.

	New work put in.	Old work remaining on premises.
Tap in street main, — inch diam		
Service pipe		
Bath, 2 cocks allowed in each		
Water closets, self-closing		
Urinals, self-closing		
Water closets, closing by hand		
Urinals, closing by hand		
Street washers		
Fountains, what kind		
Bars		
Hydrant, self-closing		
Wash basins		
Other work not described above.		

I certify that above report specifies all the work done by me or under my direction, or that was heretofore made and fixed and remains on the above-mentioned premises.

_____, _____,

Licensed Plumber.

Date of return of report, Jersey City, _____.

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Section VI.

Materials, etc.

1. Service pipe must be of extra strong "A A" lead pipe of full weight, from the street main to the building line, and laid at least 3½ feet below the established grade of street, with a bend in the form of a "trap" near the main, requiring at least one foot of extra length in such a manner as to prevent rupture by settlement.

2. All services shall be provided with a side wasting stop-cock of the same bore as the pipe, and shall be made with a stop on the key to turn one-quarter around, being fed on or off; said stop-cock to have a wrought-iron key rod securely fastened with copper wire and protected with a box of a pattern subject to the approval of the chief engineer, leading to the surface of the ground and having a hinged lid with the word "water" thereon.

3. The box must be placed upon the sidewalk not more than one

foot in from the line of curb, and must be set to grade of sidewalk.

4. No stop-cocks with "screw and spring" or rivet bottoms will be allowed in the ground for service pipes, street washers, or hydrants. All stop-cocks for the above purposes must be made with "side waste" and nut and washer key, and must conform and be equal in quality to pattern in the office of the chief engineer.

5. No wooden boxes will be allowed for street washers (or service cocks); they shall be fitted with such boxes as may be approved by the chief engineer, with securely fastened covers. When necessary the stop-cock boxes may be combined with the street washer.

75 6. House boilers must be provided with vacuum valves in new work, and, when old boilers are taken out and replaced by others, also with stop cocks, to shut off supply.

7. No hydrants in yard, except self-closing hydrants of a pattern approved by the chief engineer, will be allowed under any circumstances.

8. All apparatus for the use of Passaic water shall be subject to inspection and approval as to pattern, material, and workmanship, and any plumber violating any of the rules of this section will be suspended by the board.

Section VII.

Miscellaneous.

1. Plumbers making repairs when the water has been shut off by authority, on account of leak, defect, or disuse, shall report in writing to the office of the board that all plumbing work, both new and old, is in complete working order, and pay all expenses, otherwise the water will not be turned on, and no person, whether plumber or otherwise, shall turn on the water until he receives permission.

2. Where service pipes have been brought to or inside the curb line to a stop cock, in cases where Nicholson or other pavements have been laid, a permit will be necessary for the further continuance of said service pipes, and the charges for said service pipe must be paid.

3. Any plumber who shall be guilty of violating any of the rules adopted by the board of public works shall immediately be deprived of his license or subjected to a fine not exceeding

76 twenty-five ($25.00) [dollars], except where otherwise specified.

4. In all cases where a fine is imposed, the party so fined will be suspended from acting under his license until fine is paid.

Rules and Regulations for Sewers and Drains.

Qualifications for License.

1. The party applying for license must be a citizen of the United States, residing in the city of Jersey City, and at the time of application furnish the board with a satisfactory certificate, signed by at least two freeholders, that the applicant is known to them as a person regularly educated to the business and qualified to receive a license.

2. At the time of receiving a license the party shall file a bond in the office of the board of public works in the sum of one thousand dollars, with one or more sureties to be approved by the president of the board, conditioned that he shall indemnify and save harmless the said mayor and aldermen of Jersey City of and from all accidents and damages consequent thereupon for or by reason of any opening in any street, lane, avenue, alley, or court made by him, or those in his employment, for the purpose of connecting any lot, house, or other building with any sewer, public or private, and shall cause the drain pipe connected with any sewer which may be by him tapped within the limits of Jersey City to be properly and safely connected, so as to prevent any dirt, gravel, sand, or other substance emptying into such sewer, and shall perform such work to the satisfaction of such inspector as the board of public works aforesaid have or may appoint for that purpose; and shall
77 also replace and restore the street paving or filling over any such opening immediately upon the completion of such connections to as good state and condition as he found it, and keep and maintain the same in good order, to the satisfaction of the street commissioner of Jersey City now or hereafter to be appointed by the board of public works of Jersey City for the space of six months after such opening shall be repaved or refilled, and shall use diligence in making the connection aforesaid, and pay all fines that may be imposed for any violation of the rules of the board of public works.

Rules and Regulations.

1. Masons.—Every sewer connection must be made by a person regularly licensed to do the same, who shall first make application, stating the location of the premises, the kind of drain proposed, and time when the trench will be ready for the connection to be made, and obtain a permit for the same in regular form before opening the street.

It will also be necessary to take out a permit for making connections with sewer connections that have been laid to curb line, the same as if tapping the main sewer itself.

2. Tapping.—No person other than those licensed to do the same, having a regular permit, duly signed, shall tap any sewer, under a penalty of $25.00.

3. Opening Trenches.—In opening streets the material must be so deposited as to cause the least obstruction; the trench or hole must not be left open at night, unless protected by light or proper guards; the pavement shall be made good within forty-eight
78 hours after tapping, and kept so for six months by the person or at his expense.

4. Branch Connections.—In no case shall more than one house be drained into one connection, unless permission be first obtained, and the usual fee, three (3) dollars for each house so drained, shall have been paid for the same.

5. Private Drains.—Parties having or desiring to have private drains connected with any sewer for the drainage of property lying

outside of the limits of assessment for the said sewer, may, upon special permission, signed by the chief engineer, be allowed to do so, provided they shall first sign an agreement to pay for the privilege of so doing an annual assessment of ten ($10.00) dollars for each lot of 2,500 square feet.

6. Inspection.—All drains leading into sewers shall be built subject to the inspection and approval of the board of public works as to size, form, material, and workmanship, under a penalty of ten dollars, to be paid by the person, and the revocation or suspension of his license.

A further penalty of two dollars per day will be charged to the property for each day such drain (not thus constructed) shall remain after notice to the owners of the premises to have the same removed.

Rules 1 to 7, section 4, respecting plumbers, shall also apply to masons, as far as applicable.

79 [Endorsed:] In chancery of New Jersey. Between The Provident Institution for Savings in J. C., compl't, and Michael Nugent *et ux. et al.*, def'ts.

80 In Chancery of New Jersey.

Between The Provident Institution for Savings in Jersey City, Compl't,
and
Michael Nugent, The Mayor and Aldermen of Jersey City, *et als.*, Def'ts.

Appearance. Entered May 20, 1884.

Appearance entered for The Mayor and Aldermen of Jersey City, defendant in the above-stated cause, by Allan L. McDermott, sol.

81 [Endorsed:] In chancery of New Jersey. Between The Provident Institution for Savings in Jersey City, compl't, and Michael Nugent *et als.*, def'ts. Appearance. Allan L. McDermott, sol'r. Filed May 20, 1884.

82 *Answer of The Mayor, &c., of Jersey City.*

In Chancery of New Jersey.

Between The Provident Institution for Savings in Jersey City, Complainant,
and
Michael Nugent, The Mayor and Aldermen of Jersey City, *et als.*, Def'ts.
} On Bill, &c.

The answer of The Mayor and Aldermen of Jersey City, one of the defendants, to the bill of complaint of The Provident Institution for Savings in Jersey City, complainant.

These defendants, saving and reserving to themselves all and all manner of advantage of exception to the many errors, uncertainties,

and other imperfections in the said bill of complaint contained, for answer unto, or unto so much thereof as these defendants are advised is material for them to make answer unto, answering, say that they admit that on the nineteenth day of January, eighteen hundred and sixty-three, and on the thirteenth day of July, eighteen hundred and sixty-nine, Michael Nugent and Elizabeth, his wife, and Eliza McCormack did execute and deliver unto the complainant two bonds and mortgages, as in complainant's said bill mentioned, upon the land in the complainant's bill described.

And these defendants admit that they have assessed upon
83 said premises certain impositions or water rents for the use of the water supplied to the said premises, the amounts to which assessments are correctly set forth in complainant's bill, and further say that the water rents aforesaid were imposed in pursuance of the provisions of an act of the Legislature of New Jersey, entitled "An act to authorize the construction of works for the supplying of Jersey City and places adjacent with pure and wholesome water," approved March 25th, 1852; and an act, entitled "An act to reorganize the local government of Jersey City," passed March 31, 1871, and the supplements thereto.

And these defendants claim and insist that in the manner in which said water rents were imposed all the requirements of the laws of the State of New Jersey were strictly complied with.

These defendants admit that said mortgaged premises are not sufficient in value to pay the amounts of municipal taxes and assessments other than water rents and satisfy complainant's mortgage debt, but these defendants claim and insist that they should not be affected by this fact, in their insistment that such water rents are a lien prior to said mortgage, because the said complainant could have at any time protected itself by insisting upon the payment of said water rents by said mortgagors.

And these defendants claim and insist that all water rents levied upon said property as aforesaid are liens prior to the encum-
84 brance of complainant's said mortgages, and pray that it may be adjudged and determined, and that they may be hence dismissed with their necessary costs and charges in this behalf sustained.

ALLAN L. McDERMOTT,
Sol'r and of Counsel with Defendants,
The Mayor, &c., of Jersey City.

Oath is waived.

BENTLEY & HARTSHORNE,
Sol'rs of Compl't.

[Endorsed:] In chancery of N. J. Between The Provident Institution for Savings in Jersey City, compl'ts, and Michael Nugent, The Mayor, &c., of Jersey City, *et als.*, def'ts. On bill, &c. Answer of The Mayor, &c., of Jersey City. Allan L. McDermott, sol'r. Filed May 20, 1884.

85 *Stipulation.*

In Chancery of New Jersey.

Between THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY, Compl't,
and
MICHAEL NUGENT *et ux.*, THE MAYOR AND ALDERMAN OF JERSEY CITY, *et al.*, Def'ts.
} In Equity. On Bill to Foreclose.

It is admitted and stipulated on the part of the complainant and defendant, The Mayor and Alderman of Jersey City, as follows:

First. The allegations of fact made in the bill of complaint are to be taken as true.

Second. The printed rules or tariff of rates of the board of public works, annexed to the bill of complaint, may be used as exhibits as though duly proved in this cause.

Third. The only question to be determined by the court is whether upon the facts stated in the bill the water rents and interest and penalties mentioned in the bill of complaint, or any of them, are liens upon the property in question prior to the lein of complainant's mortgage.

It being expressly agreed and admitted that in the assessment of the said water rents, interest, and penalties all the requirements of the provisions of act entitled "An act to reorganize the local governments of Jersey City," passed March 31, 1871, and the supplements thereto, have been complied with.

86 BENTLEY & HARTSHORNE.
A. L. McDERMOTT,
Sol'r of the Mayor, &c., of Jersey City, Def'ts.

[Endorsed:] In chancery of N. J. Between the Provident Institution for Savings in J. C., compl't, and Michael Nugent *et ux.*, The Mayor & Alderman of Jersey City, *et al.*, def'ts. In equity. On bill to foreclose. Stipulation. Filed May 20, 1884.

87 *Stipulation.*

In Chancery of New Jersey.

Between THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY, Compl't,
and
MICHAEL NUGENT *et al.*, Def'ts.

It appearing from an inspection of the original that the date of record of the second mortgage set out in the bill of complaint in this cause is stated in said bill as the thirteenth day of August, eighteen hundred and seventy-nine, instead of the thirteenth day of August, eighteen hundred and sixty-nine, the proper date of record.

It is hereby agreed that the bill of complaint be amended by changing the recital of the date of record of said mortgage from the

thirteenth day of August, eighteen hundred and seventy-nine, to the thirteenth day of August, eighteen hundred and sixty-nine.

Dated June 7, 1884.

BENTLEY & HARTSHORNE,
Sol'rs of Compl't.

ALLEN L. McDERMOTT,
Sol'r "The Mayor, &c., of Jersey City," Def'ts.

88 [Endorsed:] In chancery of New Jersey. Between The Provident Institution for Savings in Jersey City, compl't and Michael Nugent *et al.*, the Mayor, &c., of Jersey City, def'ts. Stipulation. Bentley & Hartshorne, sol'rs. Filed June 17, 1884.

89 *Final Decree.*

In Chancery of New Jersey.

Between THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY, Compl't,
and
MICHAEL NUGENT *et ux.*, THE MAYOR AND ALDERMAN OF JERSEY CITY, *et al.*, Def'ts.
} On Bill to Foreclose.

This cause coming on to be heard in the presence of Bentley & Hartshorne, solicitors and of counsel with the complainant, and Allan L. McDermott, of counsel with the only answering defendant, The Mayor and Alderman of Jersey City, the complainant's bill having been heretofore taken as confessed against the other defendants, and the court having read the pleadings and stipulations, and having heard the arguments of counsel for the complainant, and for the defendant, The Mayor and Alderman of Jersey City, and having duly considered the same, and the court being of opinion that the complainant, having taken its mortgage lien subsequent to the passage of an act entitled "An act to authorize the construction of works for supplying Jersey City and places adjacent with pure and wholesome water," as set out in the bill of complaint, took the said mortgage lien subject to its being postponed to the lien
90 of the said The Mayor and Alderman of Jersey City for the water rents set out in the said bill, according to the provisions of said act, and of the act entitled "An act to reorganize the local government of Jersey City," also set out in said bill of complaint, and the court being of opinion that the establishing and enforcing of the priority of the lien of said water rents over the lien of the said mortgages, pursuant to and by virtue of the provisions of said statutes, does not deprive the complainant of its property without due process of law, and does not otherwise conflict with the Constitution of the United States or of this State, and that said statutes do not deprive the complainant of its property without due process of law within the meaning of the said constitutions:

Whereupon, and upon reading a report on file made by Earle Insley, Esquire, one of the masters of this court, bearing date on the sixth day of May, in the year eighteen hundred and eighty-four,

from which it appears that there was due to the complainant on the day of making of the said report, for principal and interest on its mortgage, and for premiums paid by it to insure the mortgaged premises, which premiums were secured by said mortgage, the sum of twenty-three hundred and seventy-six dollars and eighty-one cents, and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money
91 so due as aforesaid, and no cause being shown or appearing to the contrary:

It is thereupon, on this sixteenth day of June, in the year of our Lord eighteen hundred and eighty-four, by Theodore Runyon, chancellor of the State of New Jersey, ordered, adjudged, and decreed, and the said chancellor doth, by virtue of the power and authority of this court, hereby, order, adjudge, and decree that the water rents of the Mayor and Aldermen of Jersey City, set out in the said bill of complaint, are liens upon said mortgaged premises prior to the lien of the complainant's mortgage, and that the said bill of complaint be dismissed as to the defendant, the Mayor and Aldermen of Jersey City, with its costs to be taxed, and that execution issue against the complainant for said costs when taxed, according to the practice of this court, and that the said report and all the matters and things therein contained do stand ratified and confirmed, and that the said mortgaged premises be sold, subject to the lien aforesaid of the Mayor and Aldermen of Jersey City, to raise and satisfy the several sums of money due to the said complainant, that is to say, the sum of twenty-three hundred and seventy-six dollars and eighty-one cents, with interest thereon to be computed from the sixth day of May, in the year of our Lord eighteen hundred and eighty-four, being the date of the master's report, with the complainant's costs in this cause to be taxed, and to the complainant
92 a counsel fee of ten dollars: and that a writ of *fieri facias* do issue for that purpose out of this court, directed to the sheriff of the county of Hudson, commanding him to make sale, according to law, of the said mortgaged premises, and that out of the money arising from such sale he pay to the complainant, or to his solicitor, said debt, interests, and costs, and in case more money should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this court to abide the further order of this court, unless otherwise previously disposed of by the order of this court, and that the said sheriff make return without delay, of his proceedings by virtue of the said writ. And it is further ordered, adjudged, and decreed that all the defendants, except the Mayor and Aldermen of Jersey City, stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said mortgaged premises, when sold as aforesaid by virtue of this decree.

THEODORE RUNYON, *C.*

93 [Endorsed:] In chancery of N. J. Between The Provident Institution for Savings in Jersey City, compl't, and Michael

Nugent *et ux.*, The Mayor and Alderman of Jersey City *et al.*, def'ts. Final decree. Bentley & Hartshorne, att'ys. Filed June 17, 1884.

94 *Appeal.*

In Chancery of New Jersey.

Between THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY, Compl't,
and
MICHAEL NUGENT *et ux.*, THE MAYOR AND ALDERMAN OF JERSEY CITY *et al.*, Def'ts.

The complainant hereby appeals from so much of the final decree made in this court in the above-stated cause as declares that the lien of the water rents and penalties and interest thereon, of the defendant, The Mayor and Alderman of Jersey City, on the mortgaged premises described in the bill of complaint is prior to the lien of the complainant's mortgage to the court of errors and appeals, in the last resort in all causes.

Dated ——.

BENTLEY & HARTSHORNE,
Sol'rs and of Counsel with Compl't.

I conceive there is good cause for appeal in the above-stated cause.

CHAS. H. HARTSHORNE,
Of Counsel.

95 [Endorsed:] In chancery of New Jersey. Between The Provident Institution for Savings in J. C., compl't, and Michael Nugent *et ux.*, The Mayor & Alderman of Jersey City, def'ts. On bill, &c. Bentley & Hartshorne, sol's. Filed June 17, 1884. Service acknowledged June 14, 1884. Allan L. McDermott.

96 Court of Errors and Appeals of New Jersey.

Between THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY, Appellant,
and
MICHAEL NUGENT *et ux.*, THE MAYOR AND ALDERMEN OF JERSEY CITY *et al.*, Respondents.

To the honorable the court of errors and appeals, in the last resort in all causes:

The humble petition of The Provident Institution for Savings in Jersey City, the appellant in the above-stated cause, respectfully shows that your petitioner finds itself aggrieved by a final decree made in the court of chancery by his honor Theodore Runyon, chancellor of New Jersey, bearing date the sixteenth day of June, in the year eighteen hundred and eighty-four, wherein the said The Provident Institution for Savings in Jersey City was complainant and the said The Mayor and Aldermen of Jersey City and others were defendants, in this respect, to wit: That the said decree ad-

judges that the water rents of The Mayor and Aldermen of Jersey City, set out in the said bill of complaint, are liens upon said
97 mortgaged premises prior to the lien of the complainant's mortgage, and that the said bill of complaint be dismissed as to the defendant, The Mayor and Aldermen of Jersey City, with its costs to be taxed, and that execution issue against the complainant for said costs when taxed, according to the practice of this court.

And your petitioner humbly appeals from that part of the decree of the chancellor which decrees as aforesaid upon the ground that the same is erroneous; for that said water rents and interest thereon and penalties should not be decreed to be liens upon said premises prior to your petitioner's said mortgages, because the statute authorizing the levy of said water rents, set out in the bill of complaint and said decree, deprives the complainant of its property without due process of law, in violation of the Constitution of the United States and of this State.

Your petitioner therefore prays that the said decree of the said chancellor may be in the particulars aforesaid reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

BENTLEY & HARTSHORNE,
Sol'rs & of Counsel with Appellant.

98 STATE OF NEW JERSEY, DEPARTMENT OF STATE.

I, Henry C. Kelsey, secretary of State of the State of New Jersey, and *ex officio* clerk of the court of errors and appeals in the last resort in all causes, do hereby certify that the foregoing is a true copy of the petition of appeal in the above-stated cause, as the same is taken from and compared with the original filed June 17, 1884, now remaining on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal at Trenton, this twenty-seventh day of September, A. D. 1884.

[SEAL.] HENRY C. KELSEY,
Secretary of State.

99 [Endorsed:] N. J. court of errors & appeals. Between The Provident Institution for Savings in Jersey City, appellant, and Michael Nugent *et ux.*, The Mayor and Aldermen of Jersey City *et al.*, respondents. Petition of appeal. Bentley & Hartshorne, sol'rs.

100 New Jersey Court of Errors and Appeals. June Term, 1884.

BETWEEN THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY, Appellant,
and
MICHAEL NUGENT *et ux.*, THE MAYOR AND ALDERMEN OF JERSEY CITY, Respondents.

On appeal from final decree in chancery.

This cause coming on to be heard at the present June term of this court in the presence of the counsel of the parties, respectively, and

the arguments of counsel having been duly considered and the questions brought up by said appeal fully understood, and the court being of the opinion that the decree appealed from should be in all things affirmed:

It is thereupon on this fourteenth day of July, A. D. 1884, ordered, adjudged, and decreed that the final decree made in the court of chancery, which is appealed from by the appellant in the above-stated cause, be, and the same is hereby, in all things affirmed with costs; and it is further ordered that the record be remitted to the court of chancery, to be therein proceeded with according to law and the practice of said court.

On motion of—

ALLAN L. McDERMOTT,
Sol'r & of Counsel with Respondents.

101 STATE OF NEW JERSEY:

I, Henry C. Kelsey, secretary of State of New Jersey and *ex-officio* clerk of the court of errors and appeals in the last resort in all causes, &c., do hereby certify the foregoing to be a true copy of an order made in the above-stated cause, as the same is taken from and compared with the minutes of said court.

In witness whereof, I have hereunto set my hand and affixed my official seal, this seventeenth day of September, A. D. eighteen hundred and eighty-four.

[L. S.] HENRY C. KELSEY.

[Endorsed:] New Jersey court of errors & appeals. Between The Provident Institution for Savings in Jersey City, appellant, and Michael Nugent *et ux.*, The Mayor & Aldermen of Jersey City, respondent-. On appeal. Order affirming decree. Allan L. McDermott, sol'r. Filed Sept. 17, 1884.

102 *Costs of Appellant.*

New Jersey Court of Errors and Appeals. June Term, 1884.

Between THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY,
Appellant,
and
MICHAEL NUGENT *et ux.*, THE MAYOR & ALDERMAN OF JERSEY CITY,
Respondents.

On Appeal from Chancery.

June Term, 1884.	S. & C.	Cl'k.
Retain'g fee & ent'g appeal	4 00	15
Draw'g & en'g petition of appeal & fil'g, 6 fo.	1 80	12
Notice for hear'g, copy & service, ent'r'g & fil'g	40	32
Motion for hearing and sett'g down cause	80	38
Attendance on motion	1 50	
Motion for decree of reversal	1 50	20

June Term, 1884.	S. & C.	Ct'k.
Argument fee on final hear'g, S. & C.	6 00	
Term fees, &c.	1 60	
Draw'g & en'g costs, tax'g, fil'g & copy		1 70
	17 60	2 87
	2 87	
	820 47	

I tax this bill of costs at twenty dollars and forty-seven cents.
HENRY C. KELSEY, *Clerk.*

103 [Endorsed:] New Jersey court of errors & appeals. Between The Provident Institution for Savings in Jersey City, appellant, and Michael Nugent *et ux.*, The Mayor and Aldermen of Jersey City, respondents. On appeal. Costs of appellant. Bentley & Hartshorne, sol'rs. Filed Sept. 17, 1884.

104 *Costs of Respondents.*

New Jersey Court of Errors and Appeals. June Term, 1884.

Between The Provident Institution for Savings in Jersey City, Appellant,
and
Michael Nugent *et ux.*, The Mayor and Aldermen of Jersey City, Respondents.

On Appeal from Chancery.

June Term, 1884.	S. & C.	Ct'k.
Retain'g fee and ent'r'g appearances	4 00	12
Attendance on motion for hearing	1 50	
Motion for decree of affirmance	1 50	20
Draw'g and en'g order, ent'r'g & copy rec'd, remit., fil'g & seal, 3 fo.		2 28
Argument fee on final hear'g, S. & C.	6 00	
Term fees	1 60	
Filing check list & receipt for papers to chancery		24
Draw'g & en'g costs, tax'g, fil'g & copy		1 70
	14 60	4 54
	4 54	
	819 14	

I tax this bill of costs at nineteen dollars and fourteen cents.
HENRY C. KELSEY, *Clerk.*

105 [Endorsed:] New Jersey court of errors and appeals. Between The Provident Institution for Savings in Jersey City, appellants, and Michael Nugent *et ux.*, The Mayor & Alderman of Jersey

City, respondents. On appeal. Costs of respondents. Allan L. McDermott, sol'r. Filed Sept. 17, 1884.

106 To the Honorable Theodore Runyon, president of the court of errors and appeals of the State of New Jersey:

And now comes The Provident Institution for Savings in Jersey City, in the State of New Jersey, by Bentley and Hartshorne, its attorneys, and complains that in the record and proceedings, and also in the rendition of a decree, in a suit between The Provident Institution for Savings in Jersey City, appellant, and Michael Nugent and The Mayor and Aldermen of Jersey City, respondents, in the court of errors and appeals in the State of New Jersey being the highest court of law or equity in the said State, in which a decision could be had in said suit, and in which a final decree was rendered against it on the fourteenth day of July, eighteen hundred and eighty-four, in said suit, wherein it was determined that the establishing and enforcing of the priority of certain water rents of the respondent, The Mayor and Aldermen of Jersey City, over
107 the lien of the mortgages of the said institution, the appellant, upon the mortgaged premises described in the said bill, pursuant to and by virtue of the provisions of two acts of the Legislature of the State of New Jersey set out in the said bill, does not deprive the complainant of its property without due process of law, and does not otherwise conflict with the Constitution of the United States or of this State; and that the said statutes do not deprive the the complainant of its property without due process of law within meaning of the said constitutions; and wherein it was, among other things, decreed that the said water rents of the respondent, The Mayor and Aldermen of Jersey City, were liens upon the said mortgaged premises prior to the lien of the complainant's mortgages; and that the bill of complaint be dismissed as to the defendant, The Mayor and Aldermen of Jersey City, with its costs, to be taxed, and that the execution issue against the complainant for the said
108 costs when taxed, according to the practice of the said court, and that the mortgaged premises described in the said bill be sold to satisfy the complainant's debt, subject to the lien aforesaid of the mayor and aldermen of Jersey ——; and that the record in said suit be remitted from the said court of errors and appeals to the court of chancery, from which last court the record had been removed by the appeal in said cause, to be proceeded upon according to law and the instructions of said decree, all of which appears in the record and proceedings in said suit now remaining in said court of chancery, manifest error has happened, to the great damage of the said The Provident Institution for Savings in Jersey City.

Wherefore it prays for allowance of a writ of error, and such other process as may cause the same to be corrected by the Supreme Court of the United States.

BENTLEY & HARTSHORNE,
Sol'rs and of Counsel for Petitioner.

109 [Endorsed:] In chancery of N. J. Between The Provident Institution for Savings in J. C., compl't, *vs.* Michael Nugent & The Mayor & Aldermen of Jersey City *et al.*, def'd'ts. Petition for writ of error from U. S. Supreme Court. Bentley and Hartshorne, sol'rs.

110 The United States of America to the Mayor and Aldermen of Jersey City, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the court of chancery of the State of New Jersey, wherein The Provident Institution for Savings in Jersey City is complainant and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-second day of September, in the year of our Lord one thousand eight hundred and eighty-four.

THEODORE RUNYON,
Pres't Ct of Errors & Appeals of the State of New Jersey.

111 [Endorsed:] United States Supreme Court. The Provident Institution for Savings in Jersey City, plaintiff in error, *vs.* The Mayor and Aldermen of Jersey City, def'd't in error. Citation. Bentley & Hartshorne, att'ys. Due and sufficient service of the within citation and of the writ of error is acknowledged for the defendant in error, and consent is given that the cause be placed on the calendar of the Supreme Court for the ensuing term; a security, to which the defendant is entitled by statute, is hereby waived. Allan L. McDermott, att'y of def't in error.

112 I, George S. Duryee, clerk of the court of chancery of the State of New Jersey, the same being a court of record, do hereby certify that the foregoing is a true transcript of the record and proceedings in the cause wherein The Provident Institution for Savings in Jersey City is complainant and Michael Nugent and others are defendants, now on the files of my office. No opinion in writing was delivered either in the court of errors and appeals or in the court of chancery in the above cause.

In testimony whereof, I have hereto set my hand and affixed the seal of said court at Trenton, this first day of October, A. D. eighteen hundred and eighty-four.

[SEAL.] G. S. DURYEE, *Clerk.*

I, Theodore Runyon, chancellor of the State of New Jersey, do hereby certify that George S. Duryee, whose name is subscribed to the above certificate, was, at the date thereof, and now is, the clerk of

the court of chancery of the State of New Jersey; that said attestation is in due form; that the seal thereto annexed is the seal of said court, and that the signature of the said George S. Duryee is in his own proper handwriting.

Witness my hand at the city of Trenton, this first day of October, A. D. eighteen hundred and eighty-four.

THEODORE RUNYON.

113 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the chancellor of the State of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the court of chancery of the State of New Jersey before you, having been remitted to your said court from the court of errors and appeals of the State of New Jersey, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Provident Institution for Savings in Jersey City, appellant, and The Mayor and Aldermen of Jersey City, respondents, under the name of The Provident Institution for Savings in Jersey City, complainant, and Michael Nugent, The Mayor & Aldermen of Jersey City, *et al.*, defendants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of,
114 or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said The Provident Institution for Savings in Jersey City, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the

said Supreme Court, the twenty-second day of September, in the year of our Lord one thousand eight hundred and eighty-four.

S. D. OLIPHANT,
Clerk of the Circuit Court of the United States for the District of New Jersey.

Allowed by—

THEODORE RUNYON,
Pres't Ct of Errors & Appeals of the State of New Jersey.

115 *The Answer of the Chancellor of the State of New Jersey, within named.*

The record and proceedings of the plea whereof mention is within named, with all things concerning the same, to the Supreme court of the United States within specified, at the day and place within contained, I certify in a certain schedule to this writ annexed, as I am within commanded.

THEODORE RUNYON.

[Endorsed:] United States Supreme Court. The Provident Institution for Savings in Jersey City, plaintiff in error, *vs.* The Mayor & Aldermen of Jersey City, def'd't in error. Writ of error. Bentley & Hartshorne, att'ys. Fees, $12.64.

116 *Assignment of Errors.*

Supreme Court of the United States.

THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY, Plaintiff in Error,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY, Defendant in Error.

And now, at this day, the plaintiff in error assigns the following causes of error:

1st. Because the courts below decided that the establishing and enforcing of the priority of the lien of the defendant in error, for its water rents, over the lien of the mortgage of the plaintiff in error, pursuant to, and by virtue of, the provisions of the statutes hereinafter mentioned, does not deprive the plaintiff in error of its property without due process of law.

2nd. Because the court decided that such parts of the statutes entitled "An act to authorize the construction of works for supplying Jersey City and places adjacent with pure and wholesome water," and "An act to reorganize the local government of Jersey City," set out in the bill of complaint, as purport to postpone the lien of the said mortgages to the lien of the said water rents, do not deprive the plaintiff in error of its property without due process of law within the meaning of the Constitution of the United States; and that said parts of the said statutes are valid.

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3rd. Because the courts below adjudged that the water rents of the defendant in error, set out in the bill of complaint, are liens

upon the said mortgaged premises prior to the lien of the complainant's mortgage; and that the said bill of complaint be dismissed as to the defendant, The Mayor and Aldermen of Jersey City, with its costs to be taxed; and that execution issue against the complainant for said costs when taxed.

4th. Because the courts below adjudged that the said mortgaged premises be sold, subject to the lien aforesaid of the defendant in error, to raise and satisfy the sums of money due to the plaintiff in error upon its said mortgages.

BENTLEY & HARTSHORNE,
Attorneys for Plaintiff in Error.

118 [Endorsed:] Supreme Court of the United States. The Provident Institution for Savings in Jersey City, plaintiff in error, *vs.* The Mayor and Aldermen of Jersey City, defendant in error. Assignment of errors. Bentley & Hartshorne, attorneys for plaintiff in error.

Endorsed on cover: New Jersey court of chancery. No. 1012. The Provident Institution for Savings in Jersey City, plaintiff in error, *vs.* The Mayor & Aldermen of Jersey City. Filed 7th October, 1884.

113-506

SUPREME COURT OF THE UNITED STATES.

CASE No. 1012.

THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY,

Plaintiff in Error,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY,

Defendant in Error.

BRIEF FOR PLAINTIFF in Error.

CHARLES H. HARTSHORNE, of Counsel.

The OPINIONS OF THE COURTS BELOW, and the STATUTES of 1852 and 1871 so far as relevant to the case, are contained in the Appendices to the Brief.

J. J. Griffiths, Printer, Jersey City.

Supreme Court of United States

OCTOBER TERM, 1884.

CASE, No. 1012.

THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY,

Plaintiff in Error,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY.

Brief for Plaintiff in Error.

STATEMENT OF THE CASE.

The ground on which the jurisdiction of this Court is invoked, is that the decree below, and the statute upon which it is founded, deprive the plaintiff in error of its property without due process of law.

The Legislature of New Jersey in March, 1852, enacted "An act to authorize the construction of works for supplying Jersey City and places adjacent with pure and wholesome water," (Laws of 1852, page 419; *see* the statute, *infra*, *Appendix A*. This act established the water system of Jersey City; it authorized the corporation of Jersey City to construct and maintain the water works, and to convey water from the Passaic river to supply the inhabitants of the city for domestic and other uses. The powers given by the act were to be exercised, in the name of the city, by commissioners who were appointed in the act. The city was given the power of

eminent domain, the power to issue obligations called water scrip, and other powers necessary for the purposes of the act.

The water scrip and the interest thereon, were directed to be paid by "rents received for the use of water," and the payment of interest, beyond the amount which the water rents would pay, was directed "to be provided for and paid by the Mayor and Common Council of Jersey City, who were authorized and required to raise and assess for that purpose by taxation, such amount as should be necessary, above the other taxes authorized by law."

Sections 13, 14 and 16 provided for the regulation and distribution of water, and for the assessment of water rents in the following language:

Sec. 13. "That the board of commissioners for the time being shall regulate the distribution and use of the water in all places and for all purposes where the same may be required, and, *from time to time, shall fix the price for the use thereof and the times of payment:* and they may erect such number of public hydrants, and in such places as they shall see fit, and direct in what manner and for what purposes the same shall be used, *all which they may change at their discretion:* * * * * *

Sec. 14. That the owner and occupier of any house, tenement, or lot, shall each be liable for the payment of the price or rent fixed by the commissioners for the use of the water by such occupier, *and such price or rent, so fixed, shall be a lien upon said house, tenement, or lot, in the same way and manner as other taxes assessed on real estate in Jersey City are liens, and shall be collected in like manner, if not previously paid to the commissioners.*

Sec. 16. That it shall be the duty of the said commissioners *to fix the price which shall be assessed upon each house or other building, and upon vacant lots situate upon streets, lanes, alleys or courts, that have been actually opened, or parts thereof, through or into which distributing pipes may be laid,* and such prices shall be fixed with reference to ulti-

mately paying, from the proceeds thereof, the interest and principal of the "Jersey City Water Scrip" aforesaid; and the net proceeds of the water rents, after paying all expenses for maintaining the works and distributing the water, and salaries, wages, and incidental charges, shall be applied, first to the payment of the interest upon the debt created for constructing the works, and next to the purchase of the scrip issued therefor, if the same can be obtained at reasonable prices, or if that cannot be effected, then to be safely invested and allowed to remain as a sinking fund, to be applied to the redemption of the scrip at its maturity."

In pursuance of the authority given in the above act, the water works were constructed and water was conducted from the Passaic river to Jersey City, and distributed in pipes through the streets of that city, and rules were adopted regulating its use, and fixing a table of rates or prices by which water rents were annually assessed. (See the rules and table of rates, *Case, p.* 2.)

On the 19th of January, 1863, Michael Nugent and his wife mortgaged to the plaintiff in error, for eight hundred dollars, a lot of land in Jersey City: the mortgage was recorded on the 20th day of the same month. On the 13th day of July, 1869, Nugent and his wife again mortgaged the same lot to the plaintiff in error for seven hundred dollars: the latter mortgage was recorded on the 13th day of August, 1869. The mortgaged premises were occupied by the owner or his tenants.

In the month of March, 1871, the act of 1852 being then in force, a new charter was granted by the legislature to Jersey City, entitled "An act to organize the local government of Jersey City," (Laws of 1871, p. 1131): the provisions of the act of 1852, as far as they bear upon this case, were embodied in this charter, and the powers of the Board of Water Commissioners were transferred to the Board of Public Works of the city (*see* the

pertinent sections of the charter, *infra*, *Appendix B.* Section 81 provides: "The said Board of Public Works shall regulate the distribution and use of water in all places and for all purposes where the same may be used, *and from time to time shall fix the prices for the use thereof, and the times of payment.* * * * * And the owner and occupier of any house, lot or tenement where water shall be taken shall each be liable for the price so fixed; and the said board shall also, *from time to time, fix a sum to be assessed annually upon all vacant lots, and lots with buildings thereon, in which Passaic water is not taken, if the same are situated upon any road, street, avenue, alley or court, through or in which pipes for distributing the water are laid,* which prices and sums fixed and assessed shall be denominated water rents, and the said board shall from time to time determine and give public notice of the times and places at which the said water rents shall be due and payable, and the penalties to be charged for delaying the payments beyond the time so fixed, and the said water rents shall until paid *be liens upon the property charged therewith.*

It is then provided that the lands on which these rents are unpaid, shall be sold in the same manner, and with the same effect, as lands are sold for non-payment of city taxes.

It will be observed that the two acts above mentioned make two classes of property for the purpose of assessing water rents; namely, property upon which water is used, and property upon which water is not used, when the latter class is situated upon the streets through which the distributing pipes are laid. It will also be observed that neither act provides for the assessment of water rents in accordance with the value of the property assessed, nor does either provide a rule or standard of apportionment for the assessment of water rents, but both leave the amount of the assessment and the rule of apportionment or distribution to the discretion of the board of officers.

STATEMENT OF THE CASE.

Prior to the first of May, 1871, water was supplied by the authorities of Jersey City upon the mortgaged premises, at the request of the owners or tenants and was used by the occupants of the property from the time of its introduction to the time of beginning this suit, but the plaintiff in error was not in possession of the premises during that time, nor did it use the water so supplied nor did it in any manner give its consent to the use of the water upon the premises. (*Case, 18, 19.*)

In accordance with its rules, (*Case, 21,*) and in pursuance of the charter of 1871, the city, through its board of public works, made, on the first day of May in each year, from 1871 to 1883, both inclusive, an assessment upon the mortgaged premises for the use of water in each year respectively. The amounts varied from $15.85 to $28.67, and aggregated $272.43. Upon this amount interest at rates from seven to ten per cent., and penalties of three per cent. are charged by the city. (*Case, 19.*)*

The mortgaged premises are insufficient in value to pay the mortgage-debt and the water rents. (*Case, 20, 38.*)

The present case arises upon a bill filed in the Court of Chancery by the plaintiff in error, to foreclose its two mortgages.

It has been adjudged by the Supreme Court of New Jersey that these water rents are not assessments for special benefits *State vs. Jersey City*, 41 N. J. L., 12 Vr. 471, 475); and it has also been adjudged by that Court and by the Court of Errors and Appeals that the portion of the charter which authorizes the levy of water rents upon property upon which no water is used is unconstitutional *State, Vreeland vs. Jersey City*, 43 N. J. L., 14

* As far as these penalties and rates of interest vary from those prescribed in the rules annexed to the bill, they are made in pursuance of supplementary rules, which it has been thought unnecessary to introduce into the case.

Vr. 135; *S. C. on writ of error*, ibid., 638.) These last two decisions went upon the ground that the portion of the charter mentioned was in violation of an amendment to the state constitution, promulgated in September, 1875, which provided that property shall be assessed for taxes *according to its true value*. The specific point of violation was that the charter did not require the water rents to be assessed in accordance with the value of the property as the constitution required but left the amount and the rule of the assessment to the board of public works. It has also been adjudged by the Supreme Court of the State that the portion of the charter last mentioned is unconstitutional upon the ground that the statute does not contain a rule of apportionment for the distribution of the water tax but leaves the distribution of the tax to the discretion of the board of works. (*State, Oliver vs. Jersey City*, 45 N. J. L., 16 Vr., 256.) It has also been adjudged by the Court of Chancery and the Court of Appeals of the State that the validity and priority of these water rents may be reviewed in equity on a bill to foreclose a mortgage, and that the water rents assessd upon property on which no water is used are invalid for the reasons mentioned in the cases above cited (*Provident Institution vs. Allen*, 37 N. J. Equity, 10 Stew. 36; *S. C. on appeal*, ibid. 627.)

The assessment of water rents was next attacked by a mortgagee on a bill to foreclose in a case in which water had been supplied upon the mortgaged property, and water rents for the use of the water levied after the mortgage had been recorded: the mortgagee claimed priority for his mortgage as against the water rents *Vreeland vs. O'Neil*, 46 N. J. Eq., 9 Stew. 399). The Court did not deny that the water rents were illegal, as taxes, under the authority of the cases above mentioned, but sustained them upon the ground of contract, holding that by the use of the water an implied contract arose on the part of the occupant of the premises to pay the price

fixed by the city in its rules, and that the charter gave a special lien to secure that price to the city, and that this lien had priority over the mortgage because the statute authorizing it was passed before the mortgage was made, therefore the mortgagee took his lien with notice of the right given to the city to demand priority for the lien of its water rents though they were assessed after the mortgage was recorded. This case was affirmed in the Court of Appeals upon the ground adopted by the Court below (37 N. J. Eq., 10 Stew. 574).

The Provident Institution having filed its original bill to foreclose the two mortgages above mentioned, filed its amended bill May 20, 1884, to which the city was made a party, and in which the above mentioned water rents are set up and charged to be subsequent liens to the mortgages. The bill charges that the parts of the statutes above mentioned which purport to give priority to the lien of the water rents are in violation of the constitution of the United States, (*Case, 18, 20.*) The city answered, admitting the making of the mortgages, the assessment of the water rents, the insufficiency in value of the property to pay the water rents and the mortgage-debt, and claiming priority for the water rents over the mortgages (*Case, 37, 38.*) The Court rendered its final decree (*Case, 40.*) adjudging that the water rents were liens upon the mortgaged premises prior to the lien of the mortgages, and that the bill of complaint be dismissed as to the city with its costs, and that the mortgaged premises be sold subject to the lien of the city for its water rents to satisfy the said mortgages. An appeal was taken from this decree to the Court of Errors and Appeals, and on July 14, 1884, a decree of was rendered in that Court affirming the decree of the Court of Chancery, and remitting the record to the latter Court (*Case, 43, 44.*) The complainant below now brings the case into this Court by writ of error.

No opinion was rendered in writing either in the Court of Chancery or in the Court of Appeals, (*see* certificate of Clerk in Chancery, *Case*, 47,) but the case in each court was decided upon the authority of *Vreeland vs. O'Neil*, above mentioned, and the opinions in that case are printed in *Appendix C* to this brief.

SPECIFICATIONS OF ERRORS.

The following errors in the final decree *(Case, 40,)* are specified:

1st. It adjudges that the water rents are liens upon the mortgaged premises prior to the lien of the mortgages of the plaintiff in error.

2d. It adjudges that the bill of complaint be dismissed as to the city with costs, and that execution issue for costs against the complainant.

3d. It adjudges that the mortgaged premises be sold to pay the mortgage-debt, *subject to the lien of the city for its water rents.*

4th. It excepts the city from the decree of foreclosure "of and from all equity of redemption."

The decree states the grounds for the above adjudications to be as follows: That the mortgagee, having taken its mortgages subsequent to the passage of the act of 1852, took them subject to being postponed to the lien of the city for the water rents set out in the bill, according to the provisions of that act and of the charter; that the establishing and enforcing of the priority of the water rents, pursuant to the direction of those acts, does not deprive the complainant of its property without due process of law; and that the said statutes do not deprive the complainant of its property without due proces of law.

POINTS AND ARGUMENT.

I.

The water rents are not taxes; as taxes they are void; neither are they assessments for special benefits. They are the price of water, sold by the city to the owner or tenant of the mortgaged premises; for this price one under this contract the city has, by statute, a special lien. The water rents may be sustained upon the ground of contract; they cannot be sustained under the taxing power.

1. The water rents are not assessments for special benefits.

This is conceded on the other side. It has been adjudicated in the chain of cases mentioned in the statement of this brief.

"These assessments are in form annual taxes made under a law intended to provide the whole of the city of Jersey City with pure and wholesome water; assessed, collected and recovered by political machinery employed to collect general taxes, not made on the basis of the amount of peculiar benefits received, but by location and surface area, and are intended to raise a revenue to pay the principal and interest of the debt of the whole city, due on certificates of indebtedness called 'Jersey City water scrip.'".

State vs. Jersey City, 41 N. J. L., 12 Vr. 476.

"The levy of the water rents cannot be supported as a special assessment because there is no limitation provided in the section, by which the imposition by the board is restrained to an amount representing the actual and positive benefit to the lots. Under the ruling in a great number of well known cases in this State upon this point, it needs no argument to support the assertion that

as a special assessment the water tax has no validity. Nor was it intended as a special assessment."

State, Vreeland vs. Jersey City, 43 N. J. L., 14 Vr. 136.

2. *The water rents are not taxes.*

This point has been adjudicated by all the superior courts of New Jersey.

(a.) *The water rents levied since September, 1875, are void as taxes under the amendment of the State constitution adopted at that time: paragraph 12, § 7, art. IV.*

That amendment was as follows: "Property shall be assessed for taxes under general laws and by uniform rules, *according to its true value.*"

Said the State Supreme Court, "Under the general act and in accordance with constitutional provisions, property is assessed at its true value. In the present assessment (of water rents) property is assessed not according to its value but by a standard of measurements merely."

State, Vreeland vs. Jersey City, 43 N. J. L., 14 Vr. 138.

In the same case (*ibid, 638*) the Court of Errors said, "We think assessments of this kind are invalid because not in harmony with the system of taxation prescribed by paragraph 12, § 7, art. 4 of the amended constitution, which provides that property shall be assessed for taxes under general laws and by uniform rules according to its true value. This constitutional provision executed itself, and *propria vigore* abrogated all laws for paying taxes in a manner not consistent therewith. * * Under this constitutional provision *no tax can lawfully be laid upon property which is not determined either by special benefits derived, or by valuation of the property with respect to which it is laid upon a uniform rule of*

cal ation at its true value. The act under which this assessment was made does not conform to either essential of a valid tax law. The tax is laid upon the class of property designated in the act neither in proportion to special benefits nor upon a valuation of the property with respect to which it is laid. The rates which shall be payable by the owner of the property of the specified class, are such as the Board of Public Works in its discretion shall adopt without regard to special benefits or valuations. For this reason we think the assessment (of water rents) was illegal and that the judgment of the Supreme Court should be affirmed."

In *State, Culver vs. Jersey City, 45 N. J. L., 16 Vr. 256*, the Supreme Court said, "The assessments of water rents on vacant lots and lots on which buildings stand, wherein no water is used * * * are void because the amount of tax imposed was determined by rates adopted by the Board of Public Works of Jersey City without regard to special benefits received by the land owners. Since 1875 they are also illegal, if laid as general taxes, under the clause in the constitution that 'property shall be assessed for taxes under general laws and by uniform rules according to its true value.'"

The Court of Chancery in the *Provident Institution vs. Allen, 37 N. J. Eq., 10 Stew. 36*, said, "It has been authoritatively held that water rents assessed on vacant lots under the 81st section of the charter of Jersey City are illegal, because the amount of the tax imposed is determined by rates adopted by the Board of Public Works in its discretion without regard to special benefits or valuation." This decision was affirmed on appeal *(ibid, 637.)*

(b.) All water rents whenever laid are void as taxes, from a constitutional defect in the statute authorizing their levy; viz., the statute contains no rule for the apportionment or distribution of the assessment.

> Said the Supreme Court, in *Culver vs. Jersey City, supra*, "The act (authorizing the levy of water rents) is also defective in conferring the power to fix the sum to be assessed annually upon vacant lots and lots with buildings thereon in which water is not taken, on the *board of public works*. Where a tax is imposed for the purpose of improvements the legislative act of taxation must itself distribute the burden or prescribe the standard by which such distribution shall be made," referring to cases in New Jersey in which this principle had been adjudged. In this latter case water rents were attacked which had been assessed prior to 1875, and they were set aside upon the ground just mentioned.

The above cases, containing constructions of the state constitution and of the state statutes will be accepted as conclusive by this court. They preclude any argument upon the proposition that these water rents are not taxes. They are adjudications that water rents cannot be sustained under the power of taxation.

It makes no difference that the principles established in these cases were applied to assessments upon property on which no water was used; what has been adjudicated is that the statute, which authorizes the levy of water rents, is void, in so far as it purports to grant the power of taxation, on the ground that the statute prescribes no rule of apportionment, and also that the same statute, in so far as it purports to grant that power, is void because it does not command a levying of the assessment in accordance with the value of the property assessed; the water rents in this case, as in the case above cited, have no authority for their support save the parts of the statute which were above declared to be unconstitutional.

3. Water rents, where water has been used on the premises, may be sustained against the owner upon the ground of an implied contract by the owner to pay for what he uses. The statute gives a special lien to the city to secure the price of the water so sold.

The charter, properly construed, gives to the city the privilege of carrying on a business, with a peculiar privilege, viz; that the debts due to it in that business shall *ipso facto* be a lien upon certain land. It is not a tax, it is a special lien given for a debt. Being such, the lien cannot attach to any interest in the property save that of the debtor. It must be subject to prior liens. And the estate of a prior mortgagee cannot be affected by it.

That it is not a tax law appears from the following considerations:

1. The tax (as the statute stood till 1877, *Appendix B.* § 7.), is not fixed or imposed by the representatives of those taxed. If any other construction is possible it will not be intended that the legislature intended to enforce taxation without representation.

2. The water rents are a debt, not a tax. They are the consideration for the use of so much of the city's water. A tax never has a consideration. The part of the section which authorizes an imposition upon vacant lots *does* attempt to impose a tax. *There* is no consideration. How is it possible for the legislature to tax my debtor for my benefit for the price of the goods I have sold him. Suppose the legislature authorized a lien upon land for the price of gas furnished by a gas company, it would not be a tax. Put a municipal corporation in the place of the gas company it would still not be a tax.

3. The absence of any provision in the law for the distribution or apportionment of the imposition shows that it was not intended as a tax. It is quite legal to authorize a board to fix for each person, without a statutory rule, the price of the water he may use; it is quite

Illegal to authorize a board to fix for each person, without statutory rule, the tax that he shall pay. The statute uses the words "price" and "rent," not the word "tax."

4. Similar arguments may be deduced from giving to the board without limit, the power to fix and impose penalties, and to fix the time of payments. These are consistent with the idea of a privilege to transact a business and to fix prices, but not with the idea of a tax. Such a power given to tax-assessors, I suppose, was never heard of in a free country.

On the other hand, every part of the act is consistent with the plan of giving to the city the power to carry on the business of water purveyors, to distribute their water to those who will use it, to fix the price of the water purchased, and the times of paying the price.

And also to fix, as a condition in the contract, a penalty for non-performance, *i. e.* for failure to pay the price or debt. The acceptance of the water, is an acceptance upon these previously announced terms, and creates a contract.

Argument upon this point is, however unnecessary; it has been already determined by the state courts.

Said the Supreme Court in State, *Vreeland vs. Jersey City*, "It seems plain that no liability rests upon the owners of these vacant lots to pay the water rents imposed arising from contract. *Where water from the mains is used by a lot owner, such obligation would result.* His act of taking the water would raise an implied promise on his part to pay the price fixed for such taking." (*14 Vr. 136.*)

In the Court of Chancery, in *Vreeland vs. O'Neil*, (*post Appendix C.*) the language of the Supreme Court, just quoted, is referred to and made the basis of the Chancellor's decision. The Chancellor said, "The legislature has power to give the city a lien upon his property for the collection of the price of water supplied to him for use there, and unless the manner of fixing the price is

objectionable—subjecting him or his property to arbitrary assessments * * the regulation is not unconstitutional. Here the legislature has established a municipal board with power to fix the price at which water is to be supplied to his property * * in taking the water from the city under the provisions, he agrees to take it at the price fixed by the board."

In the same case on appeal the Court of Appeals said (*post Appendix C*) "The effect of section 81 is that the owner or occupier of any house, lot or tenement where water is taken, shall be liable for the payment of the price fixed by the board of public works for the use of the water, or at the times of payment, subject to the terms, penalties, liens and sale of land attached to such use, *and this is the contract under which the water is supplied by the city and accepted by the consumer.*"

The Court then refers to a case in which water rents upon vacant lots were held to be invalid, and says, "The present case differs in that it is merely a question of construction of a contract between the city by one of its public boards, and a water consumer, by which one party agreed to supply on specific terms, water from their water works at fixed rates, and upon certain conditions intended to secure the payment, and the other party agreed to use and pay for the same on the terms specified."

These two opinions in this case conclusively settle the law for New Jersey that water rents of this character assessed upon property upon which water is used are mere debts due by contract from the occupant of the land who has used the water, to the city which has supplied it, and that the city's claim upon the land is merely a lien to secure the debt due under that contract.

This adjudication being upon a question of local law between citizens of the same state will be accepted as conclusive by this Court.

The fact that the assessment of these water rents is not an act of taxation, and is not justified under the pow-

er of taxation, distinguishes this case from *Davidson vs. New Orleans, 96 U. S. 97*, and from all other cases in which taxes or assessments have been advanced before other liens that had priority in time.

II.

The city claiming under contract only, and not under the power of taxation, stands on the same ground as an individual or private corporation, and is entitled to no greater privileges than those to which an individual would be entitled, who claimed under a similar contract with similar statutory privileges.

The case must be considered as though the lien for the water rents were held by a private company or an individual; the city for this occasion is acting in a purely business character: it has sold water and is attempting to enforce its lien for the price.

This consideration distinguishes the case from *Murray vs. Hoboken Land and Improvement Co.*, 18 How. 272. There the remedy was for a public debt due to the national government, enforced under a public process of long continued, frequent and well-known use. This is a special and local proceeding, recent in its origin, for a debt due to a local municipality, contracted in a business not necessarily connected with its public affairs. A private corporation might supply water, or the city might supply gas, or own and manage a horse railroad, or might with legislative authority, enter into other kinds of business, but in all such cases the collection of a debt due to it in the transaction of such business, would be governed by the same rules that would govern the proceedings for the collection of a debt of an individual. The legislature might indeed give special methods of procedure to enforce the debt, but in doing so, it would be governed by

the constitutional limitations that would restrict its power if it were legislating to enforce a debt due to an individual. If water were supplied by a private company and my neighbor became indebted for its use the legislature could not authorize the company to take my property to pay that debt. The mere fact that the city and not a private company is the creditor would not enable the legislature to authorize the seizure of my property to pay my neighbor's debt. The public character of the city, the fact that it is an agency of government, even the fact that the expense of maintaining and supplying water is for a public use, would not enable the legislature to authorize the city to collect its debt for the use of water in a manner which if applied to the collection of private debts, would be subversive of constitutional guarantees. It is true that a tax might be levied upon property in the city to pay the expense of the water system, for these expenses are for a public use; but the tax must be laid in accordance with constitutional provisions; these water taxes are not laid in accordance with constitutional limitations; they cannot be justified under the police power, nor under the power of eminent domain; they can be supported only as debts, and proceedings to collect them must conform to the constitutional provisions for protection to property.

III.

The statutes of 1852 and of 1871 deprive the mortgagee of its property without due process of law, where the property is insufficient in value to satisfy both liens; in so far as they purport to postpone the lien of mortgages to the lien of subsequently assessed water rents, they also deprive the mortgagee of its property without due process of law, in so far as they authorize the summary proceedings for collecting taxes to be used against mortgagees to collect water rents.

For the sake of the argument under this head it is assumed that the mortgage lien is prior in right, as well as prior in time to the lien of the water rents; in other words, the argument under this head will proceed as though the mortgages were made and recorded prior to the passage of the act of 1852; it will be argued under the next point that the fact of the passage of the act of 1852 before the making of the mortgages, does not affect the priority of the mortgagee's lien. The bill states and the answer admits the insufficiency in value of the mortgaged premises to pay the mortgage debt and the water rents. (*Case, 20, 38.*)

1. The mortgagee's right of priority is a right of property and the destruction of that priority is a deprivation of property.

There is no question that the mortgagee's interest in the land is property; he has paid so much money, and in consideration of that payment has received from the owner a formal conveyance of an estate in fee simple, in the land, defeasible only upon the payment of the debt with interest; and this conveyance is duly recorded in accordance with the law of the State (*Case 15, 16, 17.*) Though considered in equity as a pledge, the mortgage

has always been held, both in law and in equity, to convey a title to the land, and that title is superior to the title of the owner and all claiming under him, until the debt is paid; the mortgagee becomes an owner of the land for the purpose of the protection of his debt, to the extent of the value or amount of that debt. It is unnecessary to write at length upon the incidents of his title his right to bring ejectment, (the mortgage was due long prior to the assessment of the water rents, *Case 15, 16.*) (*Osborne v. Tunis, 1 Dutch. 633*), his right to enjoin or sue for waste (*Jackson v. Turrell, 10 Vr. 329*), his right to sell the property, his right to foreclosure and sale, his right to a strict foreclosure of the equity of redemption without sale. (*Parker v. Child, 10 C. E. Gr. 41; 2 Washburn Real Property, 235; Jones on Mortgages, § 1653–4.*

It will not be denied that his right in the land is property which is protected by the constitutional guarantee under consideration; but if his interest in the land is property, it will follow that his right of priority is an element of that right of property. This will appear more clearly from the following illustration:

I convey to A. 100 acres to be selected out of a tract of land, the quantity of which is unknown. A. has now by a well known rule of law, a right of selecttion from the tract of land; he has become the absolute owner of the title to 100 acres, and I have ceased to be owner of that quantity of the land; there remains only the act of selection to sever all common rights between us with respect to the property. I now convey to B. 50 acres to be selected out of the same tract; B. has now the right to 50 acres, if that can be found there after the selection under A.'s grant; but it now appears that there are but 100 acres in the tract. A. is entitled to take these and B. acquires no title at all. A.'s rights under his grant are similar to those of a first mortgagee, and B stands in the position of a second mortgagee with respect to the land. A statute which should postpone A's right of

selection to B.'s, would deprive A of 50 acres of land; it would, indeed, postpone the priority, but that in effect would be a deprivation of the property. So in the case of mortgages, a postponement of the priority of the mortgagee who first purchased his mortgage interest in the land, to the lien of a subsequent encumbrance, would be, where the property is insufficient to satisfy the first and second liens, to deprive the first mortgagee of his property in the land to the amount or value of the second lien.

To say that one has a right of priority for his lien as against another's, means that the former owns an interest in the pledge equal to the amount of his debt, and that that ownership is absolute as against the latter's lien: to postpone the priority where the pledge is insufficient to satisfy both debts, necessarily deprives, *pro tanto*, the first lienee of his property.

To say that the legislature may destroy this priority of the mortgage, and may satisfy a subsequent lien out of the property which is only sufficient to pay the mortgagee's debt, is equivalent to saying that the legislature may take the mortgagee's property and give it to the second encumbrancer. This appears clearly by supposing that the mortgagee is in possession, and that the court has decreed a strict foreclosure of the equity of redemption of the owner: if at this point a second encumbrancer claiming under the former owner should be declared by the legislature to have a lien paramount to the mortgagee's title, the enforcement of that lien would deprive the mortgagee of his property.

Again, the mortgagee having acquired an interest or title to the land before the levy of the water rents, the lien given for the water debt of the owner, incurred after the owner had conveyed this interest to the mortgagee, cannot attach to the interest of the mortgagee who is not a party to the contract: as well might it be claimed that the lien might attach to any interest in the land which the owner had previously conveyed in fee simple abso-

lute to a third person: the interest held by such a purchaser cannot be more certainly beyond the reach of subsequent encumbrance by the previous owner than is the interest of the mortgagee; the legislature cannot appropriate the one or the other to the payment of the debts of the grantor, or mortgagor, subsequently contracted.

In *Lavin v. Emigrant Industrial Savings Bank, 18 Blatch. C. C. 1*, a person had absented himself from his state for three years, leaving no evidence during that time of his being alive. Under a statute of the state this created a legal presumption of his death. Letters of administration were issued on his estate and the bank paid certain money belonging to the supposed deceased to the administrator. The absentee returned and sued the bank for the money: the bank set up the statute in defence. In speaking of the constitutional provision under consideration the Court said:

"Further citations are clearly unnecessary for the proposition, that, in the construction of this constitutional prohibition, no just distinction can be made between the owner's title and his possession, between his abstract right of property and those incidents of use and enjoyment which constitute the value of ownership, or between a law of proceeding which purports to effect a change of title, and one which purports to estop him from recovering the possession of the property, while not denying his title. Nor can there be any doubt, that, if the plaintiff is deprived of his property by the decision of the surrogate that he is dead, made binding and conclusive upon him by an act of the legislature, he is deprived of his property by the state, within the meaning of the constitution. The prohibition clearly extends to the action of the state, through any or all of the departments, legislative, executive or judicial."

Citing, Munn v. Ill 94. U. S. 113.
Green v. Biddle, 8 Wheaton 75.
Bronson v. Kinzie, 1 How. 318.
Columbia Bank v Okely, 4 Wh. 277.

ARGUMENT. POINT III.

In the case of *Ridlon v. Cressy, 65 Maine, 128*, there was an attachment upon the estate of defendant, who subsequently conveyed with warranty. He died and his administratrix appeared and set forth the insolvency of the estate; this, by the law of the state, dissolved the attachment. The case under attachment was brought to judgment, and an act was passed, during the pendency of the suit, and subsequent to defendant's death, provided that the insolvency should not vacate the attachment. The plaintiffs relied on this statute as reviving their attachment but the Court said that such an act would be unconstitutional and void.

The principle decided was that the legislature could not *revive* a lien against a prior purchaser: how then can it *create* a lien as against a prior encumbrancer?

In the case of *Burke v. Mechanics' Savings Bank et al., 12 R. I. 513*, Burke died leaving infant children who inherited land from him. The widow, who became their guardian, caused a house to be erected on the property, and petitioned the general assembly of Rhode Island for leave to mortgage the land as guardian of her children, to secure the debt incurred by her in building the house: the assembly authorized the execution of the mortgage. Upon a suit brought by the children to have the mortgage and conveyance under it set aside, the Court held that the resolution of the Assembly was void as depriving the children of their property without due process of law.

This case is in point, for if the legislature could not charge the mother's debt on her children's estate in the land, how can it charge the owner's debt on the mortgagee's estate in the land: the fact that the children's estate is absolute and the mortgagee's is defeasible can not distinguish the cases in principle.

In *Sinking Fund Commissioners v. Bank, 1 Metc. (Ky.), 174*, the State, having a first mortgage lien, waived it by statute in favor of a subsequent mortgagee: afterward an act was passed repealing the waiver: on a contest as

to priority it was held that the repealer was "ineffectual to destroy the lien acquired" by the second mortgagee. "The displacement of prior incumbrances prejudicial to individual rights can only be effected by the sovereign power of taxation."

Trustees of Public Schools v. Trenton, 3 Stew. 679.

To see the scope of the statute, consider in how many cases it would, if enforced, take the property of one person to pay the debt of another; the person who uses the water contracts the debt, the property of all persons who own any interest in the land, on which the water is used, may be taken to pay that debt thus,

1. The property of mortgagees may be taken to pay the debt of the mortgagor who purchases the water.

2. The property of remainder-men may be taken to pay the debt of the life tenant.

3. The property of the landlord may be taken to pay the debt of his tenant, who may use the water.

4. All cases in which one, is, by wrong, temporarily in possession of any land against the rightful owner: for the debt of the wrong-doer who may use the water, it is proposed to take the property of the owner of the land.

In the second and fourth mentioned cases, the remainderman and the owner cannot possibly prevent their property being taken for the debt of another: in those cases the charter proposes to take the property of one to pay the debt of another beyond possible prevention. In the first and third classes of cases, mortgagees and landlords cannot possibly prevent their property from being taken to pay the debts of others, except by refusing altogether to loan money on mortgage, or to lease property, within the limits of the city.

It is no answer to say that the same result follows in cases of taxes and of assessments for improvements. In those cases the legislature acts under the sovereign power of taxation, by general laws provided for taxing. It

has been adjudicated that the assessment of these water rents is not an act of taxation, nor justifiable under the taxing power. Upon what principal then is the taking of private property justified in this case? Not under the power of taxation; not under the power of eminent domain; not under the police power. These are the only three powers under which private property can be lawfully taken. In each of these cases the power must be exercised under certain limitations and prescribed forms. But the taking in the case in hand it is not attempted to justify under any of these powers. Under what power can it be justified?

Of course the decree in this case does not the less deprive the mortgagee of its property, because it orders the land is be sold subject to the city's lien, instead of decreeing that the proceeds of sale be first applied to the payment of the water rents. The decree if allowed to stand can never be questioned by the mortgagee in any other proceeding, and at some day he must pay the water rents or lose part of his property to satisfy them.

This is as much a deprivation of property as though the decree ordered the water rents to be paid from the proceeds of sale.

2. *The statutes complained of deprive the mortgagee of its property without due process of law in so far as they allow the machinery for collecting taxes to be applied against the mortgagee to the collection of water rents.*

The mortgagor's debt for water is not only charged on the property (*i.e.*, the estate) of another person, but to enforce the lien, that property is to be seized and sold as for a tax, without notice, hearing, or adjudication. It is an attempt to exercise the taxing power to collect a private debt.

"Transferring money from the owners of it into the possession of those who have no title to it, though it be

done under the name and form of a tax, is unconstitutional for all the reasons which forbid the legislature to usurp any other power not granted to them."

Cooley's Consti. Limitations, 490.

A log-driving corporation was authorized, in Michigan, whenever logs were put into navigable streams without adequate means for preventing obstructions, to take charge of the same and cause them to be run, driven, etc., at the owner's expense, and without his consent, and it gave the corporation a lien on the same for their reasonable charges, with power to sell the property on giving notice, and so enforce the lien. The act was held void. *Ames vs. Port Huron Company, 11 Michigan, 147.* In our case, as in that, the property of the complainant is taken without his consent, and sold to discharge a lien founded upon a charge supposed to be for the benefit of the property and in aid of a public need, but not incurred by the complainant.

"Confiscations without a judicial hearing after due notice would be void as without due process of law. * * And if the legislature cannot confiscate property or rights, neither can it authorize individuals to assume at their option powers of police, which they may exercise in the condemnation and sale of property offending against their regulations, or for the satisfaction of their charges for services and expenses in its management and control rendered without the consent of the owners."

Cooley's Consti. Lim., 362, 463.

In *Glover vs. Powell, 2 Stock. 211*, the legislature had granted to individuals the right to dam a creek. This was done and improvements were made at considerable private expense. A subsequent act directed the destruction of the dam and improvements: the Court said, p. 230, "But suppose the conditions of the act to have been violated, and that the grant has been forfeited, the forfeiture must be declared by due process of law. The

legislature have no right to condemn the defendants unheard, and deprive them of their propperty in this summary way."

In *Lane vs. Dorman, 3 Scam. (Ill.) 242*, an act authorizing a creditor to sell the land of the estate of a deceased person to pay debts due from the estate to such creditor, without a judicial investigation and determination of the claims, was held void. The case is cited and approved in *Cooley's Const. Lim. 104.*

In *Rockwell vs. Maring, 35 N. Y. 301*, a statute had been enacted authorizing any person to seize any animal found trespassing on his property and notify the commissioner of highways, who must advertise the animal for sale, and after selling pay certain fees to the captor and to himself, returning the balance to the owner. An animal was seized and sold under this act, and the statute was held void on the ground that it took property to satisfy a private injury, without judicial hearing, or condemnation; without due process of law?

If property may not be taken for a private injury without due process of law, may it be taken for a private debt without due process of law.

In *Parsons vs. Russell, 11 Mich. 114*, an act was held void which gave to creditors a lien on vessel for supplies, etc., and authorized such vessels to be seized and sold on the creditor's application without any provision for a hearing of the owners, or for judicial inquiry or judgment against them (except they first gave bond) until after the sale. The Court said that the words "due process of law," when used in relation to judicial proceedings, had been universally held as "intended to secure to the citizen the right to a trial, according to the forms of law, of the questions of his liability, and responsibility, before his person or property shall be condemned. Judicial action is in such cases imperatively required, and 'implies and includes *actor, reus, judex*–regular allegations, opportunity to answer, and trial according to some settled course of judicial proceedings.'" * * "The boat and vessel law

ignores this principle and confers upon a claimant a right to condemn and sell a boat or vessel, upon his bare assertion of a debt or demand, without requiring any proof to substantiate it to be made before any judicial tribunal or requiring any judgment or decree of such tribunal to be made after a trial or investigation of the demand."

See also In re Beebe, 29 How. 462.

Applying the principles of these authorities to the case in hand we find the charter violates them in several particulars:

1. The consent of the mortgagee to the use of the water or the incurring of the debt or lien is neither provided for nor required. He does not use the water nor consent to its use, nor derive any benefit from the supply (*Case, 13, 39.*) He cannot prevent the owners using it. Yet the lien is charged on his interest in the land in spite of him.

2. No notice or hearing is provided for, or given before ascertaining the debt. The authority is "to fix the prices for the use thereof (of water) and the times of payment." Notice is required of the time of payment only. The property is first charged with the rent, or debt, the notice is given after (*Case, 19, 22.*)

3. The creditor is made sole judge of the amount due, and of the property chargeable.

The city having fixed the rules by which the water is to be taken, and charged for, as the size of the house, the measure of water, &c. (*Case, 23*), whether the house was of the given size, whether a given quantity of water was used, how much land is chargeable, are judicial questions to be determined on evidence. The city, in its own cause, is made sole judge of these questions.

4. There is no provision for any determination or adjudication of the existence of the debt, or of its amount.

When the rate or charge has been fixed, say by the size of the house, and the occupant has assented to that rate by using the water, no investigation or determina-

tion or judgment of any kind is provided for to ascertain the existence of the debt, not even a determination that the debt is unpaid; but the creditor without notice, without hearing, without trial, without judgment, without execution or process, is empowered to sell the property of the mortgagee to pay the debt of another person.

The water rents are charged in proportion to the size of the house in which the water was used, (*Case 23*). Was the water used every year? Was the house of the size claimed by the city? Has any part of the rent been paid? Does the city's lien extend over all the land charged. On what evidence are these questions investigated? By whom? What opportunity has the mortgagee to offer evidence on these questions or to be heard in defence? What adjudication is made upon them, and by what tribunal?

It is a plain attempt to turn the power of taxation into an agency to collect private debts.

Could the legislature authorize a gas company or a private water company to collect its debts by seizing and selling the property of its debtors, including the property of prior non-assenting encumbrancers, without hearing, trial or judgment? If it may do so, what creditor may it not authorize to collect debts in the same summary manner? Such a proceeding is proper to collect a tax, but it is unconstitutional to attempt to collect a debt in such manner. A debt must be proved or confessed before the property of the debtor can be taken for it.

It is no answer to say that the city has not yet attempted to enforce its lien, and that therefore this is not the time to attack the mode of enforcement. The lien being special and statutory and harsh, the city can pursue no method for enforcing it except that expressly given by statute. If that means of enforcing the lien be invalid, and the lien cannot be enforced in any other method, the lien itself must be void. It is true the city may sue for the debt, but it cannot sue the mortgagee; nor will it

pretend that on a judgment against the owner for the debt the interest of the prior mortgagee could be sold. The lien is unenforceable against the mortgagee, if the only method pointed out in the statute for enforcement is bad.

In *Parsons vs. Russell, supra*, the defendant had given bond, and his vessel was released; the suit was on the bond, and it was contended that the method of enforcing the lien being illegal, the lien itself was bad and could furnish no consideration for the bond, (see brief of counsel, pp. 117-118, and dissenting opinion of Manning, J.,) and the Court was of that opinion.

To the sema point are,

Coit v. Waples 1 Minn. 134; Harrison v. Wade, 3 Coldw. (Tenn.) 505; Johnson v. Van Horn, 16 Vr. 136.

IV.

No assent, by the mortgagee, to the provisions of the act of 1852 postponing the mortgage lien to the lien of the subsequently assessed water rents, can be inferred from the acceptance of the mortgages after the passage of that act; there has been no waiver on the part of the mortgagee of the priority of his lien.

It has been shown that a deprivation of the mortgagee's priority of lien is a deprivation of property, and that that deprivation is without due process of law. It follows that, the mortgagee's priority cannot be affected by the act in question, unless there has been an assent to the terms of the act upon the part of the mortgagee, or a waiver of his priority.

1. There is an important distinction to be drawn between the constitutional guarantee of protection to civil rights, and the guarantee of immunity to the obligation of contracts: the latter looks only to the past; the

former looks to the future. A contract is a thing made; the constitutional guarantee protects contracts which were made at the time when the statute questioned was passed; but the protection to life, liberty and property guaranteed in the constitution against legislative aggression, has reference both to the past and to the future.

A statute may prescribe that all mortgages hereafter made shall bear interest at six per cent. notwithstanding the rate called for in the mortgage; but the statute would be void if it directed that all mortgages hereafter made should be discharged upon the payment, when due, of ninety per cent. of the principal of the debt; such an act would be a confiscation of the property of A. for the use of B., a mere taking from one to give to another; such an act, although having reference to the future, would be an attempt to deprive mortgagees of property without due process of law, and that cannot be done by legislating for the future any more than for the past. The right to constitutional protection to property is a right that is always vested: a statute which modifies contracts must be read as one of the terms of all contracts thereafter made; but a statute which would deprive one of property, in violation of the constitution, can have no effect upon contracts made either before or after its passage; otherwise the statute would rise above the constitution. Had the act of 1852 provided that mortgages thereafter made should lose their priority as against subsequent water rents, unless the mortgagee gave written notice of his lien to the city authorities, such a provision would have become a part of the mortgage-contract: it would have been valid: but the provision in question does not merely regulate the means by which the mortgagee shall acquire and preserve his lien, it does not merely modify the contract, it destroys the lien, it works a forfeiture. It is the same in effect as though it had authorized the mortgagor, if he

had no other means, to pay his water debt from the money he borrowed from the mortgagee, and deduct the amount from the mortgage debt.

2. There has been no assent on the part of the mortgagee, no waiver of his priority.

Of course one may voluntarily waive his right to his property, in a particular case though he may not waive his right to the protection of the constitution. The courts below have founded their decisions upon such a supposed waiver in this case. The Court of Appeals said (*Appendix C, p. xviii,*) "The mortgagee, knowing the terms of the agreement, (between the city and the mortgagor to pay for the use of water,) became a party to it, so far as to waive the priority of the lien of his mortgage, according to the date of its record, for the security of the city." This waiver the Court inferred from the fact that the mortgagee loaned his money with a knowledge of the previous act. But this is not an assent upon the part of the mortgagee to the terms of the act of 1852, nor is it a waiver of the priority of his lien. An assent implies freedom of choice, and such a freedom implies that a refusal will not be followed by any important loss; but in this case if a mortgagee does not assent he cannot loan his money upon mortgage in Jersey City; he will be deprived of an important use of his property. If the legislature said to an individual, "You may purchase property in Jersey City, but if you do, you must open one-half of it to the use of your neighbor," could it be said, if he purchased, that he had voluntarily given the half of it to his neighbor?

When considered, not with reference to its effect upon an individual's rights, but in its relations to the whole community of Jersey City, and to the business and property rights of the inhabitants in large classes, the compulsory principle of the act appears more clearly.

The argument in the opinion of the Courts below which assumes a freedom of choice upon the part of

mortgagees to waive their priority of lien or refrain from loaning upon mortgages, is fallacious. Jersey City has over one hundred and twenty thousand inhabitants; it has the varied industries of a large commercial and manufacturing town: it would be impossible for this business to be carried on, for the city to maintain its wealth and continue its prosperity, if one of the most important uses of property were denied the inhabitants under the penalty of risk of forfeiture if they exercised that use. Yet under the terms of this act no person can loan money upon mortgage within the territory of Jersey City except at the risk of forfeiting a portion of it, to be appropriated to pay the debt of another person; and this risk is determined by acts of that other person, which the mortgagee can neither prevent nor control.

This forfeiture would be compulsory, not voluntary. It is not necessary that the compulsion should be from a physical or moral necessity; it becomes compulsion if the loss from refraining to assent would be greater than the loss from giving the assent; and it is plain that for the whole money lending community of Jersey City the loss resulting from making no loans of money upon bond and mortgage, would be far greater than the loss resulting from an occasional payment of the water debts of mortgagors. Mortgagees would, in most cases, take the chance of submitting to the exaction of a small sum in case of the failure of the mortgagor to pay his water debts, rather than to make no loans at all upon bond and mortgage within the city. Suppose the legislature enacted that every mortgagee hereafter loaning money should pay five dollars upon accepting his mortgage, to the use of a benevolent association: if the law could be enforced it would not stop the loaning of money in Jersey City, for capitalists would be compelled by the natural laws of a highly civilized commercial life to submit to the exaction. Though the individual might refrain the class would submit; and the annual forfeiture by citizens of large sums of their property, under such a law, would

be as certain as the payment of duties on imports: the loss from refraining would be greater than the loss from submitting. Yet it might be as well argued in that case as in this, that the mortgagee might refrain from loaning his money if he did not wish to submit to the terms of the statute; and that his acceptance of the mortgage was a waiver of his rights as against adverse rights given by the statute to others.

3. The legislature cannot impose upon the lawful use of property a condition that the owner shall waive the protection guaranteed by the constitution. The argument of the Court below is that it is a condition to the right of the mortgagee to loan money on mortgage that he shall waive the priority of his mortgage lien; that this use of his money, by a mortgagee, is allowed him only on the condition of his permitting his property to be taken from him for the use of another person. Apply this principle generally and see to what consequences it would lead.

The legislature might so get rid of every constitutional restriction in favor of individual rights; it could enact that purchases of land hereafter made should be subject to the condition that the purchaser should waive his right to trial by jury in reference to the land so purchased, or that the land so purchased should be subject to be taken for public use without compensation, or that contracts thereafter made with respect to it might be released at the pleasure of the legislature, or that mortgage pledges should be taken subject to forfeiture for private use, and so on through the whole list of civil rights.

This present act may under certain circumstances effect the forfeiture of the mortgagee's entire property, thus: suppose land worth $1000 to be mortgaged for a term of several years; the owner subsequently contracts with the city to take water for manufacturing purposes at a special rate. The price for measured water, when

the consumption is between 100,000 and 1,000,000 cubic feet per month, is $1.10 per thousand cubic feet (*Case 26.*) It would take but a few months for the lien for water rents to exceed the value of the property, and if that lien had precedence, the value of the mortgagee's estate in the land would be gone before he could demand his debt. Every mortgagee loaning in Jersey City, loans at the risk of such forfeiture, for every mortgagor may use the mortgaged premises for manufacturing purposes, and incur a water debt equal to the value of his property. The fallacy of the suggestion of the Court of Appeals that "if on inquiry he (the mortgagee) found that the mortgagor was delinquent in the payment of his water rents, after he had taken the mortgage, he could have demanded payment of the bond, and if refused, foreclosed his mortgage, (*Appendix C. xcii.*), is apparent: for the mortgagee cannot prevent the owner from purchasing water in any one year: immediately upon taking the water the water rents become a lien; if now the mortgagee insists on their payment, and the mortgagor refusing, the mortgage is foreclosed, the mortgagee must yet pay the water rents of that year, if the property is insufficient to pay the mortgage debt: he is in that case deprived of his property to the amount of the water debt.

It was held by the United States Supreme Court, in *Insurance Co. vs. Morse, 20 Wall. 445*, that an agreement to waive the right to remove a cause into the United States Courts was void, and that a statute which required such an agreement as a condition to a foreign corporation's doing business within the state, was void so far as it authorized such an agreement. The principal there adopted, is that the legislature cannot impose a waiver of a constitutional right as a condition to doing a lawful act. In the case of the *Baltimore and Ohio Railroad vs. Cary, 28 Ohio State, 208*, an act declaring that the operating of a railroad within the State of Ohio by a foreign corporation should be deemed to be a waiver of the right of such corporation to remove causes brought

against it in state courts to courts of the United States, was held unconstitutional. In *Doyle vs. Insurance Co., 94 U. S. 535*, the Supreme Courts sustains the right of the state to exclude a foreign insurance company from doing business within the state unless it would waive the right to remove a cause; but that decision renders the Ohio case no less pertinent to the case at bar, for the ground of the decision in *Doyle vs. Insurance Company* was that the state had the right to exclude the foreign corporation, whereas, in the case at bar, the legislature has no right to prevent persons from loaning money upon mortgage. In *Doyle vs. Insurance Company*, if the state had not had the power to exclude foreign corporations from doing business within its territory, the case would have been parallel with the case at bar, and beyond question the Supreme Court would have held the statute void. As is said by Mr. Justice Hunt in *Insurance Co. vs. Morse*, "The requirement of an agreement like this (to waive the right to remove causes) from their own corporations (by the State of Wisconsin) would be *brutum fulmen*, because they possess no such right under the constitution of the United States." If the statute is void which requires a domestic corporation to waive the right to remove a cause into the United States Courts as a condition to doing business, then a statute which requires a person to submit to a forfeiture of a portion of his property without due process of law, as a condition to his carrying on the business of lending money on mortgage securities, would also be void. In either case it is the attempt to take from one a constitutional right as a condition to the transaction of a lawful business.

It would be beyond the power of the legislature, if it had intended to do so, to prohibit persons from using their property by lending their money on mortgage securities in Jersey City.

Acts denying compensation to the land owner for improvements of land lying within the lines of streets as

marked out by public officers, where the improvements were made after the mapping, have been held to be void. *State ex. Carrigan, 7 Vr. 52. Matter of Wall Street, 17 Barb. 617.* Such laws do not more prohibit the use of property than does a law which forbids one from loaning his money on mortgage under the risk of losing it in favor of subsequent liens for the debts of the owner.

"If the legislature should undertake to provide that persons following some lawful trade or employment should not have the right to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, there can scarcely be a doubt that the act would transcend the due bounds of legislative power."

Cooley Const. Limitation, 393.

In *The People ex. Otis, 99 N. Y. 48*, an act which purported to discharge the City of Yonkers from liability upon certain negotiable bonds which had been stolen from a savings bank, upon the city delivering to the bank duplicates of such bonds, and providing that the original bonds, after a notice published, should cease to be negotiable, was held void, the Court saying, "Depriving an owner of property of one of its essential attributes is depriving him of his property within the constitutional provision, and the legislative declaration that upon the publication of a notice a negotiable security shall no longer be transferable is not due process of law, working a forfeiture of a right given by contract."

4. Again, it plainly was not the purpose of the act to prohibit the loaning of money upon mortgage in Jersey City, nor to compel mortgagees to choose between refraining from such loans, or risking a forfeiture, nor in any wise to restrict that use of money; it was the plain object of the act to compel the mortgagees to pay the mort-

gagor's debt for water, if the mortgagor himself did not, and if the value of his equity of redemption was not sufficient for that purpose.

5. The argument that all persons hold their property subject to existing laws, and that therefore the mortgagee loaned with reference to the statute in question, is not applicable; it is but the argument of assent or waiver in another form. I cannot do better than quote the language of Judge Choate in *Lavin vs. The Industrial Savings Bank*, *18 Blatch.* cited above; the judge says, (p. 35): "The position taken, that all persons hold their property subject to existing laws must be conceded, with some very important limitations. Unquestionably, all persons within the jurisdiction of the state hold their property subject to restriction as to its use by the exercise, on the part of the state, of the police power already referred to, and, in this sense, subject to the laws of the state, whether enacted before or after the title was acquired. But the laws must be valid and constitutional laws. The state cannot take away from property the essential character of property. It cannot, under cover of the exercise of the police power, make property already acquired, or thereafter to be acquired, subject to be taken away from its owner without due process of law. It could not pass a general law providing, as to all after acquired property, that it should be held on the tenure or condition, that, in certain prescribed cases, it should be taken from the owner and given to another, without any form of judicial proceeding, without notice or an opportunity to be heard. A construction which would allow this would, in effect, allow a state, by law, to abrogate, within its limits, the institution of property, altogether: and although it is true, that that which a man has not, cannot be taken from him, yet the necessary implications of the amendment is that '*property*,' as generally understood, with all its necessary incidents, shall forever be preserved, within the limits of the Union."

6. There is a vital distinction between the act in question and laws which merely regulate the use of property, such as the registry laws and the mechanic's lien law. These postpone liens as a penalty for not doing some act required for the public good, and which it is within the power of the encumbrancer to do. They merely regulate the use of property and the steps by which liens are acquired and made public; in these cases the careful encumbrancer or purchaser may protect himself against subsequent liens, and yet enjoy the full use of his property; but in the case in hand the statute does not regulate, it destroys, the right of priority of the encumbrancer; the mortgagee can by no diligence, by no precaution, protect himself against a subsequent lien for a water debt; in these cases a freedom of choice is allowed, the mortgagee must register his lien or he forfeits his priority but the registry does not obstruct the use of his property it is not an unreasonable restriction. If he fails to register he may justly be said to waive his right of priority, but in the case at bar he must submit to loss of priority or else submit to the loss of an important use of his property, the loaning upon mortgage securities in Jersey City.

7. It is no hardship to the city to deprive it of its supposed priority of lien; for the water rents are payable in advance (*Case 22*), the city may therefore refuse to supply water until the water rents are paid; they also have a right of action against the person who uses the water (*appendix B, sec. 81*). These remedies are amply sufficient to insure the payment to the city of all the water rents to which it is entitled.

It is submitted that the decree of the courts below is erroneous in adjudging the water rents to be prior liens to the mortgages.

CHARLES H. HARTSHORNE,
Of Counsel.

gagor's debt for water, if the mortgagor himself did not, and if the value of his equity of redemption was not sufficient for that purpose.

5. The argument that all persons hold their property subject to existing laws, and that therefore the mortgagee loaned with reference to the statute in question, is not applicable; it is but the argument of assent or waiver in another form. I cannot do better than quote the language of Judge Choate in *Lavin vs. The Industrial Savings Bank, 18 Blatch.* cited above; the judge says, (p. 35): "The position taken, that all persons hold their property subject to existing laws must be conceded, with some very important limitations. Unquestionably, all persons within the jurisdiction of the state hold their property subject to restriction as to its use by the exercise, on the part of the state, of the police power already referred to, and, in this sense, subject to the laws of the state, whether enacted before or after the title was acquired. But the laws must be valid and constitutional laws. The state cannot take away from property the essential character of property. It cannot, under cover of the exercise of the police power, make property already acquired, or thereafter to be acquired, subject to be taken away from its owner without due process of law. It could not pass a general law providing, as to all after acquired property, that it should be held on the tenure or condition, that, in certain prescribed cases, it should be taken from the owner and given to another, without any form of judicial proceeding, without notice or an opportunity to be heard. A construction which would allow this would, in effect, allow a state, by law, to abrogate, within its limits, the institution of property, altogether: and although it is true, that that which a man has not, cannot be taken from him, yet the necessary implications of the amendment is that '*property*,' as generally understood, with all its necessary incidents, shall forever be preserved, within the limits of the Union."

6. There is a vital distinction between the act in question and laws which merely regulate the use of property, such as the registry laws and the mechanic's lien law. These postpone liens as a penalty for not doing some act required for the public good, and which it is within the power of the encumbrancer to do. They merely regulate the use of property and the steps by which liens are acquired and made public; in these cases the careful encumbrancer or purchaser may protect himself against subsequent liens, and yet enjoy the full use of his property; but in the case in hand the statute does not regulate, it destroys, the right of priority of the encumbrancer; the mortgagee can by no diligence, by no precaution, protect himself against a subsequent lien for a water debt; in these cases a freedom of choice is allowed, the mortgagee must register his lien or he forfeits his priority but the registry does not obstruct the use of his property it is not an unreasonable restriction. If he fails to register he may justly be said to waive his right of priority, but in the case at bar he must submit to loss of priority or else submit to the loss of an important use of his property, the loaning upon mortgage securities in Jersey City.

7. It is no hardship to the city to deprive it of its supposed priority of lien; for the water rents are payable in advance (*Case 22*), the city may therefore refuse to supply water until the water rents are paid; they also have a right of action against the person who uses the water (*appendix B, sec. 81*). These remedies are amply sufficient to insure the payment to the city of all the water rents to which it is entitled.

It is submitted that the decree of the courts below is erroneous in adjudging the water rents to be prior liens to the mortgages.

CHARLES H. HARTSHORNE,
Of Counsel.

APPENDIX A.

THE ACT OF 1852. Laws of 1852, p. 419.

CHAPTER CLXXIV.

AN ACT to authorize the construction of works for supplying Jersey City and places adjacent with pure and wholesome water.

Preamble.

WHEREAS, by an act of the legislature, passed eighteenth March, eighteen hundred and fifty-one, certain commissioners were appointed "to examine and consider all matters relative to supplying Hoboken, Van Vorst, and Jersey City with a sufficient quantity of pure and wholesome water, for the use of their inhabitants, and the amount of money necessary to effect that object," and the said commissioners having performed the duties assigned to them, and made a report of their examinations, together with an opinion, founded upon careful surveys and estimates made by experienced engineers, that a sufficient quantity of pure and wholesome water for the use of the inhabitants of Jersey City, and parts of the townships of Bergen, North Bergen, and Hoboken, may be obtained at such reasonable cost as will render the acquisition thereof advantageous, and the mayor and common council of Jersey City, and sundry others interested therein, having petitioned for the passage of an act to authorize the construction of works for that purpose therefore,

Mayor and common council authorized to convey water through city.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the mayor and common council of Jersey City be, and are hereby authorized, in the manner herein after provided, to take and convey into and through Jersey City, and such other places adjacent thereto as may desire the same, such portion of the water of Passaic river, flowing between the villages of Acquackanonck and Belleville, as may be required to furnish the inhabitants of said city, and others residing adjacent thereto, with a sufficient quantity of pure and wholesome water for domestic and other uses.

Commissioners to employ agents and assistants.

2. *And be it enacted*, That all authority granted or given by this act shall be exercised exclusively by and through a board of commissioners, to be appointed as hereinafter directed; and, in pursuance of this authority, the said commissioners may employ all proper engineers, surveyors, clerks, and other agents and assistants, necessary or convenient for accomplishing the purpose contemplated by this act, and may enter upon any land or water for the purpose of making surveys and examinations for the same.

Commissioners may take and hold lands, &c.

3. *And be it enacted*, That the said commissioners shall, for and in the name of the mayor and common council of Jersey City, take and hold

any lands or other real estate necessary for the construction of any canals, aqueducts, reservoirs, or other works for conveying or containing water, or for the erection of any buildings or machinery, or for laying any pipes or conduits for conveying the water into or through the said places, or to secure and maintain any portion of the works, and in general to do any other act necessary or convenient for accomplishing the purposes contemplated by this act; and may distribute the water throughout the corporate limits of Jersey City, and through such portions of the townships of Bergen, North Bergen, Hoboken, and other places, as the inhabitants thereof may desire.

Proceedings in case owners of land and commissioners cannot agree

4. *And be it enacted*, That in case of any disagreement between the commissioners and the owner of any lands or water rights, which may be required for the said purposes, or affected by any operation connected therewith, as to the amount of compensation to be paid to such owner, or in case any such owner should be an infant, or a married woman or insane, or should be absent from this state, the circuit court in and for the county of Hudson shall, on the application of either party, nominate and appoint three dis-interested persons to examine such property, and estimate the value thereof or damage sustained thereby; and who shall, after reasonable notice to the parties of the time and place where they will be heard in relation to the matter, proceed, without delay, to make their report thereon, and deliver the same to the court, at the next session thereof, which shall be held in the said county.

Claims for damages to be made within three years.

5. *And be it enacted*, That whenever such report shall be confirmed by the court aforesaid, the commissioners shall, within two months thereafter, pay to the said owner, or to such person or persons as the court may direct, the sum mentioned in said report, in full compensation for the property so required or for the damage sustained as the case may be; and thereupon the mayor and common council of Jersey City shall become seized in fee of such property so required, and shall be discharged from all claim by reason of such damage; but no claim shall be made or allowed after the expiration of three years from the time the land is taken or the damage suffered.

Notes or scrip may be issued.

11. *And be it enacted*, That for the purpose of defraying all the expenses and the costs of such lands as shall be taken or purchased for the purposes of this act, and for constructing all works necessary to the full accomplishment thereof, and all expenses incidental thereto, and for the payment of necessary expenses incurred in making the examinations directed by the act approved on the eighteenth day of March, eighteen hundred and fifty-one, the said board of commissioners shall have authority to issue, in the name of the said mayor and common council of Jersey City, notes or scrip, or certificates of debt, to be denominated on the face "Jersey City water scrip," to amount, in the whole, not exceeding six hundred thousand dollars, bearing an interest not exceeding six per cent. per annum; and said interest shall be payable semi-annually, and the principal of said debt shall be payable at periods not less than fifteen, or more than fifty years from date; and the commissioners may sell the same at public or at private sale, at such times as the proceeds

thereof may be required for the construction of the works, or may pledge the same for money borrowed at a higher rate of interest, if, in their opinion, the necessities of the work required such proceeding; and, in addition to the said sum of six hundred thousand dollars, the commissioners may issue and dispose of scrip, in the manner herein before provided, to meet all payments of interest accruing upon any scrip by them issued as aforesaid: *provided however*, that no such scrip shall be issued by the commissioners after the expiration of one year from the time that the works are so far completed as to furnish one million gallons of water per day; and the payment of all interest accruing after that time, beyond the amount which may be paid from the rents received for the use of the water, shall be provided for and paid by the mayor and common council of Jersey City, who are hereby authorized and required to raise and assess for that purpose, by tax, such amount as may be necessary above the other taxes authorized by law; *and provided also*, that no notes or scrip, or certificates of debt, shall be sold at public or private sale for less than the par value thereof, nor shall any higher rate of interest be paid for any sum of money borrowed on a pledge of said scrip than at the rate of seven per cent. per annum; *and provided further*, that the work authorized or contemplated by this act shall not be commenced by the said commissioners until at least one half of the whole amount of money required for the said work shall be first had or secured; all certificates issued as aforesaid shall be signed by the commissioners, or a majority of them, and countersigned by the mayor of Jersey City; and a record of all certificates issued or disposed of shall be kept by the commissioners, and copies of such record shall be made and delivered to the treasurer of Jersey City; all moneys received by the commissioners, shall be deposited by them in some bank or banks of good credit in the state of New Jersey or in the city of New York, and be made payable to the joint order of the president and at least two other members of the board only.

Commissioners to regulate distribution of water.

13. *And be it enacted*, That the board of commissioners for the time being shall regulate the distribution and use of the water in all places and for all purposes where the same may be required, and, from time to time, shall fix the price for the use thereof and the times of payment; and they may erect such number of public hydrants, and in such places as they shall see fit, and direct in what manner and for what purposes the same shall be used, all which they may change at their discretion; *provided*, that all hydrants, conduits, or other appliances, required and furnished for the purpose of extinguishment of fires, shall be placed as the mayor and common council of Jersey City shall direct, and shall be under their exclusive control and direction.

Proviso.

14. *And be it enacted*, That the owner and occupier of any house, tenement or lot, shall each be liable for the payment of the price or rent fixed by the commissioners for the use of the water by such occupier and such price or rent, so fixed, shall be a lien upon said house, tenement or lot, in the same way and manner as other taxes assessed on real

estate in Jersey City are liens, and shall be collected in like manner, if not previously paid to the commissioners.

Contracts for use of water.

15. *And be it enacted*, That the said commissioners shall make no contract for the price of using the water for a longer term than three years; and, at the expiration of any term or lease, the price for the use thereof shall be adjusted according to the regulations then established.

Proceeds of assessments and water rents, how disposed of.

16. *And be it enacted*, That it shall be the duty of the said commissioners to fix the price which shall be assessed upon each house or other building, and upon vacant lots, situated upon streets, lanes, alleys or courts, that have been actually opened, or parts thereof, through or into which distributing pipes may be laid, and such prices shall be fixed with reference to ultimately paying, from the proceeds thereof, the interest and principal of the "Jersey City water scrip" aforesaid; and the net proceeds of the water rents, after paying all expenses for maintaining the works and distributing the water, and salaries, wages, and incidental charges, shall be applied, first to the payment of the interest upon the debt created for constructing the works, and next to the purchase of the scrip issued therefor, if the same can be obtained at reasonable prices, or if that cannot be effected, then to be safely invested and allowed to remain as a sinking fund, to be applied to the redemption of the scrip, at its maturity.

Assessment for payment of interest on water scrip.

17. *And be it enacted*, That when the said commissioners shall certify to the mayor and common council of Jersey City that the works contemplated by this act are so far completed that the inhabitants thereof may be regularly supplied with a sufficient quantity of pure and wholsome water for domestic use, then the mayor and common council of Jersey City shall instruct the assessors of the said city to assess, annually, upon all grounds within their limits which are liable to taxation, a special tax, at the rate of two cents for each one hundred square feet of their surface; and the said special tax shall be a lien upon the lands so taxed, in the same manner as other taxes assessed on real estate in Jersey City are liens, and shall be collected in like manner, which amount shall be collected and applied to the payment of interest upon the water scrip, until the water rents, authorized to be collected by this act, shall amount to a sum sufficient to pay such interest as it accrues, after which the tax shall cease to be levied.

Disposition of income when scrip is paid.

18. *And be it enacted*, That when the scrip shall all be paid and cancelled, so much of the income derived from the works, as may be necessary therefor, shall be applied, by the commissioners, to the payment of salaries, wages, the cost of repairs, and other current expenses required for keeping the whole in good order and successful operation, and making such additions thereto as the wants of the citizens may require; and all moneys remaining after making the payments necessary for the purposes above mentioned, shall be paid, on the first Tuesday of each and every month, to the treasurer of Jersey City; and such payments shall be accompanied by written statements showing the whole amount of money received during the preceding month, specifying from whom and for what the same was received, and also an account of all moneys paid during the month, specifying to whom and for what they were paid, which

statement shall be verified by the affidavit of the clerk of the board of commissioners.

City liable for payment of interest and principal.

19. *And be it enacted*, That a majority of the said commissioners shall constitute a quorum for the transaction of any business allowed or required by the powers or duties of their commission; and all contracts and engagements, acts and doings, of the said commissioners, within the scope of their duty and authority, shall be obligatory upon, and be in law considered as done by the mayor and common council of Jersey City; and the said mayor and common council, and all real estate within Jersey City, and all goods and chattles within said city, belonging to residents thereof, shall be liable for the payment of the principal and interest that may become due on the scrip or bonds to be issued by virtue of this act.

First board of water commissioners.

24. *And be it enacted*, That John D. Ward, Dudley S. Gregory, Moses B. Bramhall, the president of the board of aldermen of Jersey City for the time being, and one person to be elected at the next charter election held in Jersey City, shall constitute the first board of water commissioners; the said commissioners shall elect, annually, one of their number to be president of the board, and shall determine, by lot or otherwise, the terms during which the four of the number, other than the president of the board of aldermen, shall hold their offices, and these shall be as follows: one of them shall remain in office three years, one four years, one five years, and one six years, all to be computed from the first day of May next ensuing; and the president of the board of aldermen for the time being shall, ex officio, be one of said board.

Commissioners may be removed

27. *And be it enacted*, That the mayor and common council of Jersey City shall at any time remove any commissioner; *provided*, it shall satisfactorily appear, after reasonable notice to the parties, and hearing the causes of complaint, and answers thereto, if any shall be offered, that the commissioner whose removal is sought has been guilty of such maladministration, or such neglect of the duties of his office, that his removal will be right and proper, and two-thirds of all the members elected to the said common council shall concur in said removal.

Public act.

28. *And be it enacted*, That this act shall be deemed a public act, and shall take effect immediately.

Approved March 25, 1852.

APPENDIX B.

PARTS OF THE CHARTER OF 1871, entitled "An act to reorganize the local government of Jersey City." (Laws of 1871, p. 1131.)

City officers and their salaries.

Sec. 5. And be it enacted, That the powers of the said city government shall be vested in a mayor who shall receive an annual salary of three thousand dollrrs; twelve members of the board of aldermen, who shall receive no salary; *seven members of the board of public works*, who shall each receive an annual salary of fifteen hundred dollars, (except that the president of said board shall receive an annual salary of twenty-five hundred dollars;) five members of the board of police commissioners, who shall each receive an annual salary of (five hundred) dollars, (except that the president of said board shall receive an annual salary of fifteen hundred dollars;) five members of the board of fire commissioners, who shall each receive an annual salary of five hundred dollars, except that the president of said board shall receive an annual salary of (twelve) hundred dollars; twelve members of the board of education, who shall receive no salary; (the mayor shall also be ex-officio a member of the board of education;) and (five) members of the board of finance and taxation, (who shall receive no salary other than that herein elsewhere provided.)

Commissioners.

Public Works.

Police.

Fire.

Sec. 7. And be it enacted, That the board of public works shall consist of the following seven persons, and their successors, viz: Thomas E. Bray, William H. Bumsted, Earl S. Martin, William Startup, August Ingwersen, Benjamin F. Welsh, and Murrillo H. Gillett; that the board of police commissioners shall consist of the following five persons and their successors, viz: Thomas Edmondson, Frederick G. Goetze, Thomas A. Gross, Isaiah S. Hutton and Ezekiel M. Pritchard; that the board of fire commissioners shall consist of the following five persons, and their successors, viz: John Boyd, Alonzo B. Dean, John H. Carnes, Dudley S. Gregory, jr., and Thomas W. Tilden.*

Water supply.

Sec. 75. And be it enacted, That the board of public works is hereby authorized to take and convey into and through Jersey City, and to such other places adjacent thereto as may desire the same, such portion of the water of Passaic river flowing between the villages of Aquackanonk and Belleville as may be required to furnish the inhabitants of the said places with a sufficient quantity of pure and wholesome water for domestic and other purposes; and all authority over the Jersey City water and

*NOTE—The members of the board of public works continued to be appointed by the legislature till 1877, when a statute was passed providing that they should thereafter be elected by the voters of the city. (Laws of 1877, Chap. 38.)

drainage works shall be exercised exclusively by and through said board, and in pursuance of this authority the said board may employ all proper engineers, surveyors, clerks and other agents and assistants necessary or convenient to accomplish the purpose contemplated by this act, and may enter upon any grounds or water, for the purpose of making surveys and examinations for the same.

Lands held for water and sewerage purposes.

SEC. 76. And be it enacted, That the said board shall, for and in the name of the mayor and aldermen of Jersey City, take and hold any lands and other real estate necessary for the construction of any canals, aqueducts, reservoirs or other works for conveying or containing water, or for the erection of any buildings or machinery, or for laying any pipes or conduits for conveying water into or through the said places, or for the construction of the sewerage works provided for in this act, or to secure and maintain any portion of the work, and in general may do any other act necessary or convenient for accomplishing the purposes connected therewith and contemplated by this act, and may distribute water through the corporate limits of Jersey City, and through such portions of the counties of Hudson and Bergen as the inhabitants may desire.

Arbitrators to be appointed.

SEC. 77. And be it enacted, That in case of any disagreement between the board of public works and the owners of any lands or water rights which may be required for the said purposes, or affected by any operation connected therewith, as to the amount of compensation to be paid to such owner, or in case any such owner shall be an infant, or a married woman, or unknown, or insane, or shall be absent from this state, the circuit court in and for the county of Hudson shall, on the application of either party, nominate and appoint three disinterested persons to examine such property, and estimate the value thereof, or damage sustained thereby, and who shall, after responsible notice to the parties of the time and place where they will be heard in relation to the matter, proceed without delay to make their report thereon, and deliver the same to the court at the next session thereof, which shall be held in said county.

Issue of water scrip.

SEC. 80. And be it enacted, That for the purpose of defraying the expense and cost of such lands as shall be taken or purchased for purposes connected with the Jersey City water works, and for constructing all works necessary thereto, said board of public works shall have power to order the issue of the bonds of said city, to be denominated on the face "Jersey City Water Scrip," to an amount in the whole not exceeding (two and a half millions of dollars, including the amount already issued, bearing interest payable semi-annually, not exceeding seven per centum per annum, and the principal payable in not less than fifteen nor more than fifty years from date, and the board of finance and taxation shall, on the direction of the board of public works, sell said bonds, from time to time, at public or private sale, at not less than ninety-five per centum of their par value, as the proceeds thereof may be required for the purposes aforesaid, and the payment of all interest accruing on said bonds, beyond the amount which may be paid from the rents received for the use of water, shall be provided for and paid by the board of finance and taxation, who are hereby authorized and required to raise and assess by tax

such amount as may be necessary for the purpose, and a record of all such bonds issued or disposed of shall be kept by the board of finance and taxation, and copies of such records shall be made and delivered to the treasurer of Jersey City, and all moneys received therefrom shall be paid to the city treasurer.

Regulating use of water rates, &c.

SEC. 81. And be it enacted, That the said board of public works shall regulate the distribution and use of the water in all places and for all purposes where the same may be required, and from time to time shall fix the prices for the use thereof and the times of payment; and may erect such number of public hydrants, and in such places as they shall see fit, and direct in what manner and for what purpose the same shall be used; all of which they may change at their discretion; and the owner or occupier of any house, lot, or tenement where water shall be taken shall each be liable for the payment of the price so fixed; (and the said board shall also, from time to time, fix a sum to be assessed annually upon all vacant lots, and lots with buildings thereon, in which Passaic water is not taken, if the same are situated upon any road, street, avenue, alley or court, through or in which pipes for distributing the water are laid,) which prices and sums so fixed and assessed shall be denominated water rents; and the said board shall from time to time determine and give public notice of the times and places at which the said water rents shall be due and payable, and the penalties to be charged for delaying the payments beyond the times so fixed; and the said water rents shall, until paid, be liens upon the property charged therewith; and the said board may, at any time after the twentieth day of December, in each year, deliver to the board of finance and taxation of Jersey City, an account, certified under the hand of the president, of all such water rents and penalties for delinquency as are then due and remain unpaid, with the name of the owner or occupier of the lot liable to said rent, or whereon the water was used, for which said rent was charged, and a description or designation of such lot, and such certified account shall be filed in the office of the city clerk, and recorded in a book to be kept for that purpose; the said account and book, and duly certified copies thereof, shall be evidence of the facts contained therein, and the said board of finance and taxation shall, upon receiving said certified account, cause said lands to be sold for the payment of said water rents and penalties, and the interest thereon, from said twentieth day of December, at the rate of twelve per centum per annum, and also costs, charges and expenses of advertising and sale in the same manner as said board of finance and taxation may be authorized by law to sell lands in said city for the payment of taxes thereon, and said proceedings and the effect thereof, shall be the same in all things as if the said lands were sold for taxes, and, until sale, the city collector shall have power to collect and receive said penalties, with interest thereon, at the rate of twelve per centum per annum, from such twentieth day of December, and the costs that may have accrued thereon, and shall before such sale, certify to the city clerk what rents, penalties and interest thereon, contained in such certified account, have been since paid.

Owner or occupant of premises personally liable.

Water rents a lien.

Penalties and sale of lands.

Contract for only three years.

SEC. 82. And be it enacted, That the said board shall make no contract for the price of using water for a longer term than three years, and at the expiration of any term of lease, the price for the use thereof shall be adjusted according to the regulations then established.

Proceeds how applied.

SEC. 83. And be it enacted, That the board shall fix the aforesaid water rents or prices for water or assessments upon property situated where distributing pipes are laid, with reference to paying from the proceeds thereof, the interest and principal of the bonds issued for purposes connected with said water works, as they respectively fall due; and such portions of the said proceeds as may remain after paying all expenses for extending and maintaining the works, and raising, distributing the water, and salaries, wages and incidental charges, shall be applied, first to the payment of interest upon the debt created for the construction of the works; next, to the purchase of the scrip or bonds issued therefor, if the same can be obtained at reasonable rates, or if that cannot be effected, then to be safely invested by the board of finance and taxation, and allowed to remain as a sinking fund, to be applied to the payment of scrip at its maturity.

Owner's claim on occupier.

SEC. 84. And be it enacted, That if the occupier of any tenement or lot upon which any water rent may become due while the same is occupied by him, shall refuse or neglect to pay the same when due, the owner of such tenement or lot may pay such rent or penalties thereon with interest, and may recover the same, with lawful interest thereon, from such occupier by action, or in case such occupier is the tenant or sub-tenant of such owner, by action or distress, to be made and conducted in the same manner as a distress for rent for said premises, such distress to be levied in six months after such payment, and not to be levied for more than one year's rent, and penalties and interest thereon; and such rent, penalties and interest shall in no case be recovered by such owner of such occupier, unless, as between said owner and occupier, such occupier should pay the same.

Suits to recover.

SEC. 85. And be it enacted, That the said board may prosecute or defend any action or process of law, or in equity, by the name of the Mayor and Aldermen of Jersey City, against any person or persons, for money due for the use of water; for the breach of any contract, expressed or implied, touching the execution or management of the works, or the distribution of the water, or of any promise or contract made to or with them, and also for any injury or trespass, or nuisance done or suffered to the water courses, pipes, machinery, or any apparatus belonging to or connected with any part of the works, or for any improper use or waste of the water.

Board may make regulations.

SEC. 87. And be it enacted, That for the security and proper management of the Jersey City water works and drainage works, and to prevent the waste or improper use of water, the said board of public works shall have power to make such by-laws, rules and regulations respecting the introduction of Passaic water into houses, tenements and manufactories, or other places where the same may be required and may, from time to time, regulate the use thereof in such manner as may seem

to them necessary and proper; and also to fix and determine of what size and forms, and of what materials, and in what manner private drains shall be laid and connected with the sewers or drain pipes in the streets or thoroughfares in the city, and may fix the penalties to be recovered for breaches or evasions of all such rules: provided, such rules, regulations and by-laws are not inconsistent with the constitution and laws of the State of New Jersey, or of the United States; and the penalty imposed in any one case shall not exceed the sum of fifty dollars.

Proviso.

Taxes a lien.

SEC. 151. And be it enacted, That all taxes and assessments which shall hereafter be assessed or made upon any lands, tenements or real estate situate in said city, shall be and remain a lien thereon from the time of the confirmation thereof until paid, notwithstanding any devise, descent, alienation, mortgage or other incumbrance thereof, and that if the full amount of any such tax or assessment shall not be paid and satisfied within the time limited and appointed for the payment thereof, it shall and may be lawful for the board of finance and taxation to cause such lands, tenements or real estate to be sold at public auction, for the shortest term for which any person will agree to take the same and pay such tax or assessment, or the balance thereof remaining unpaid, with the interest thereon, and all costs, charges and expenses, and to direct to be executed, under the common seal of said city, a declaration of such sale, to be signed by the mayor and city clerk, and to deliver the same to the purchaser, and such purchaser, his executors, administrators, or assigns shall by virtue thereof, lawfully hold and enjoy said lands, tenements or real estate for his or their proper use, against the owner or owners thereof, and all persons claiming under him or them, until said term shall become completed or ended; provided that the said board shall first have caused such sales to be advertised once a week for five weeks, in the official newspapers (or supplements thereto, printed and published in said city,) which advertisments shall describe the said lands, tenements or real estate and specify the amount of the assessment or tax; and the recitals in such declaration of sale shall be evidence of the assessment, advertising and sale; and provided, also, that the lands, tenements or real estate sold may be redeemed by the owner, mortgagee, occupant or person interested therein, or by any other person, for and in behalf of the owner or owners, mortgagees, or any creditor or creditors, under a judgment, attachment or mechanic's lien, or claimant of such lands, tenements or real estate, at any time within two years after the sale for either taxes or assessments, or for both by paying to the treasurer of the city, for the use of said purchaser, the said purchase money, together with any other sum paid for taxes or assessments, water rents or sewerage taxes which the said purchaser may have paid, chargeable on said lands, tenements or real estate, and which he is hereby authorized to pay, with interest thereon, at the rate of fifteen per centum per annum, in addition thereto; and the certificate of the treasurer of the city stating the payment, and showing what lands, tenements and real estate such payment is intended to redeem, shall be evidence of such redemption; the owner or owners, mort-

Sale of real estate for taxes.

Advertisement of sale.

Redemption of sale.

gagee or any creditor or creditors, under a judgment, attachment or mechanic's lien, shall have power to redeem at any time, until the expiration of six months' notice in writing given to him by the purchaser, or those claiming under him, either personally, or if not to be found in the city, then by depositing such notice in the post office of said city, directed to him at his last known place of residence (or at the post office nearest thereto), but nothing herein contained shall be so construed as to impair the lien created by such tax, assessment or sale, within a month after the service of such notice by the purchaser, or by those claiming under him; it shall be the duty of the person serving, or causing the same to be served, to file in the city clerk's office a copy of the notice served, together with the affidavit of some person who shall be certified by the officer before whom said affidavit shall be taken, to be a credible person, proving the due service of said notice, which affidavit shall be evidence in all courts of the facts therein contained: and provided also, that the said term for which any lands, tenements or real estate are so sold, as aforesaid, shall not commence, nor shall such purchaser or those claiming under him, have a right or possession to said lands, tenements or real estate, until the time limited for the redemption of the same shall have expired; and the said purchaser or those claiming under him, shall, at the expiration of said term, quit and surrender the said lands, tenements or real estate in as good state and condition as when he entered thereon, natural wear and damage by the elements excepted: provided also, that the sale of such lands, tenements or real estate, or any portion of them, may be adjourned or postponed from time to time, or suspended as the said board may direct: and provided that if at any such sale of lands, tenements or real estate, the whole or any part thereof shall remain unsold for the want of purchasers, then it shall and may be lawful for the said board to adjourn the said sale not less than thirty nor more than (sixty) days; twenty days' notice at least shall be given as aforesaid, of the said adjourned sale: and if at said adjourned sale there shall be no purchasers for said lands, tenements or real estate, or any part thereof, then it shall and may be lawful for the treasurer of the city to purchase the said lands, tenements or real estate, for the benefit of the city, subject to the same redemption as hereinbefore provided for: provided also, that all moneys paid for the redemption of said lands, tenements or real estate as aforesaid, together with such taxes and assessments as shall be paid by a mortgagee or other creditor, under a judgment, attachment or mechanic's lien, shall be a lien on said lands, tenements or real estate for the amount so paid, with interest at the rate of seven per centum per annum: and such lien shall have precedence of all other liens on said lands, tenements or real estate; and on foreclosure of any mortgage by such mortgagee redeeming, shall be directed to be made out of said lands, and on sale of said lands under any such judgment, attachment or mechanic's lien, shall be paid out of the proceeds of sale: provided further, that a complete record of all taxes and assessments shall be kept in the city clerk's office, which record shall contain the time when such taxes and assessments were confirmed, the time when they were paid (and if the prop-

Proviso.

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erty has been sold therefor), the time of said sale, and to whom sold; and if redeemed, when and by whom; it shall be the duty of the city clerk to record in a book to be called "records of sales," all declarations of sale, to give certificates of search in relation to liens to any person or persons applying for the same, and to cancel such declarations when the property for which they were given shall be redeemed on certificate of the treasurer of such redemption, and to file said certificate in the clerk's office; it shall be the duty of the treasurer to make out two certificates for all property redeemed, one for the person redeeming and one to be filed in the city clerk's office.

APPENDIX C.

Opinions of the Court of Chancery and of the Court of Errors and Appeals in Vreeland v. O'Neill.

No opinion was rendered by either the Court of Chancery or the Court of Errors and Appeals in case at bar, (see certificate of Clerk of Court of Chancery, case, p. 47,) but the case was decided in both of these Courts upon the authority of *Vreeland* vs. *O'Neil*, (36 N. J. Equity, 199), S. C., on appeal, *sub nomine*, *Vreeland* vs. *Mayor, &c., of Jersey City*, (37 N. J. Equity, 574.) Following are copies of the opinions in the last named case :

VREELAND vs. O'NEIL.

THE CHANCELLOR: This suit is brought to foreclose a mortgage for $1600 and interest, given on or about February 16th, 1872, by James O'Neil and wife to the complainant, on land in Jersey City. The bill states that the Mayor and Aldermen of Jersey City, within the territorial jurisdiction of which municipality the mortgaged premises are, have supplied water on the premises, from the water pipes used by that corporation, in the distribution of the Passaic water through the city, which water so supplied was used on those premises, by the owners and tenants thereof continuously, during the year 1874, and every subsequent year since then; that the corporation, acting through its Board of Public Works, has attempted to assess upon the premises certain impositions or taxes called water rents, for the use of that water as before stated, which supposed assessments or impositions were made at or about the dates, and for the sums respectively mentioned in the bill: and that the corporation claims that those assessments are liens on the property, by virtue of the provisions of its charter: but that the complainant charges and insists, that his mortgage was delivered and recorded before any of those assessments were made, and that neither the charter nor any other law gives the power to levy those water rents on the property in such way as to make them a lien prior to that of the complainant's mortgage, and that if it does, the grant of power is so far unconstitutional and void. The answer admits the making of the assessments, and claims that they are, under the provisions of the charter, liens prior to the mortgage.

The charter was approved March 31st, 1871, and went into operation immediately. *P. L.* 1871, *p.* 1094. It was therefore in force when the

complainant took his mortgage, which was not until February, 1872. It provides (§ 81) that the Board of Public Works shall regulate the distribution and use of the water in all places, and for all purposes where it may be required, and shall from time to time fix the prices for the use thereof, and the times of payment; and that the owner and occupier of any house, lot or tenement, where water shall be taken, shall be liable for the payment of the price so fixed. It also directs that the board shall fix a sum to be assessed annually on all vacant lots and lots with buildings on them in which the water is not used, if they are situated on roads, streets, avenues, alleys or courts, through, or in which the pipes for distributing the water are laid; and that the prices (for the use of the water) and the sums (assessed on property where the water is not used) shall be denominated water rents. It provides that the water rents shall, until paid, be liens on the property charged therewith, and for the collection thereof, directs the Board of Finance and Taxation, to cause the lands to be sold to raise the water rents and penalties and the interest thereon and costs, charges and expenses of advertising and sale, in the same manner as the board may be authorized by law to sell lands in the city for the payment of taxes thereon, and provides, that the proceedings and the effect thereof, shall be the same in all things, as if the lands were sold for taxes. It provides also, (§ 84), that if the occupier of any tenement or lot on which water rent may become due, while in his occupation, shall refuse or neglect to pay it when due, the owner may pay it, and when as between them the occupant ought to pay it, recover it of him, with the penalties and interest, by action or distress. The provision of the charter (§ 151) for the collection of unpaid taxes and assessments, by sale of the property, declares that they shall be and remain a lien on the lands, tenements or real estate on which they are assessed or made, from the time of the confirmation thereof until paid, notwithstanding any devise, descent, alienation, mortgage or other incumbrance thereof, and it provides for sale and for redemption after sale, by the owner or incumbrancers. Under this provision the lien is superior to the complainant's mortgage. *City of Paterson v. O'Neill*, 5 *Stew.* 386. When the complainant took his mortgage the charter gave to the municipal authorities a lien, for the collection of the rents for the water which should be supplied by the city, to the owners or occupants of the property. He took his mortgage subject to the liability to that lien, and the methods prescribed by the legislature for enforcing it. While in *Jersey City* v. *Vreeland*, 14 *Vr.* 638, it was held that the assessments of water rents on vacant lots and other property where the water is not used are illegal, because the amount of tax imposed is determined by rates adopted by the Board of Public Works in its discretion without regard to special benefits or valuations; in the same case in the Supreme Court it was said that from the use of the water on the property an obligation to pay the water rent would result; that the act of the owner in taking the water would raise an implied promise on his part to pay the price fixed for such taking. *Vreeland* v. *Jersey City*, 14 *Vr.* 135. There is nothing before me to bring into question the legality of the assessment in this case on any ground except that of the unconstitutional-

ity of the provisions which give the city a lien superior to the lien of the mortgage for the price of water supplied to the owner or occupant of the property after the giving of the mortgage. By the provisions under consideration the legislature has given to the city the means of collecting the lien upon the premises to which the water is supplied, superior to all incumbrances thereon, the price of the water supplied for use on the premises. The complainant who took his mortgage after the provision went into operation, clearly has no right superior to that of the owner; and if the provision is valid against the latter it is so also against him. There does not appear to be any constitutional objection to the lien as against the owner. The legislature has power to give the city a lien upon his property for the collection of the price of water supplied to him for use there, and unless the manner of fixing the price is objectionable as subjecting him or his property to arbitrary assessments to which of necessity he must submit whether just or unjust (which would be subversive of his rights of property) the regulation is not unconstitutional. Here the legislature has established a municipal board with power to fix the price at which water is to be supplied to his property. He is under no legal necessity (and no actual one so far as appears) to take the water, and if he chooses to take it, under the circumstances, he has no ground of complaint; no right of his is infringed. In taking the water from the city under the provision, he agrees to take at the price fixed by the board. The mode of fixing it is not drawn in question here. There is no evidence on the subject, nor does it appear whether it is fixed before the water is supplied or afterwards. The city's lien is paramount to that of the complainant's mortgage.

VREELAND, vs JERSEY CITY.

1. A mortgage on a house and lot of land in Jersey City given after the charter of 1871, will be postponed to the lien for water rates assessed for water taken from the City Water Works, and used on the premises subsequent to the date of the mortgage.

NEW JERSEY COURT OF ERRORS, &c.

MARCH TERM, 1883.

Garret G. Vreeland,
and
The Mayor and Aldermen of Jersey City.

On appeal from a decree of the Court of Chancery.

C. H. HARTSHORNE, for Applt.

A. L. MCDERMOTT, for Applee.

SCUDDER, J:—On bill filed by the complainant Garret G. Vreeland to foreclose a mortgage made by James O'Neil and wife, to secure the payment of a bond for $1600 dated February 10, 1872, the Mayor and Aldermen of Jersey City were made defendants, because they claim a lien for certain waters rents on the mortgaged premises as prior encumbrances to the complainant's mortgage. An interlocutory decree having been made establishing the priority of these water rents, over the complainant's mortgage, this appeal has been taken to test its validity.

The water works of Jersey City have been constructed by special legislative authority, and their purpose is expressed in the title of the original act, approved March 25, 1852, (Laws, p. 419,) which is entitled "An act to authorize the construction of works for supplying Jersey City and places adjacent with pure and wholesome water."

The provisions of this statute, and of this supplement of 1855, (Laws, p. 507,) were in substance incorporated in the act to reorganize the local government of Jersey City, (Laws, 1871, p. 1094).

Sec. 81, of this charter gives the powers of the commissioners, under the original act, to the board of public works, to regulate the distribution and use of water in all places and for all purposes where the same may be required, and from time to time to fix the prices for the use thereof, and the times of payment, and enacts, that the owner and occupier of any house, lot or tenement where water shall be taken shall each be liable for the payment of the price so fixed; that the said water rents shall, until paid, be liens upon the property charged therewith, and that on certificate of water rents in arrear, and delinquencies in payment of the rents and penalties, the board of finance and taxation shall cause said lands to be sold for the payment of said water rents and penalties and the interest thereon, in the same manner as lands may be sold for payment of taxes thereon. The imposition of the lien, and the means for its enforcement are fully provided for in this charter. The time when the lien shall attach and its priority, are established in sec. 151, which enacts "that all taxes and assessments which shall hereafter be assessed, or made upon any lands, tenements or real estate, situate in said city, shall be and remain a lien thereon from the time of the confirmation thereof until paid, notwithstanding any devise, descent, alienation, mortgage or other encumbrance thereof, &c."

There is a proviso in this section, that the lands, tenements, or real estate sold may be redeemed by the owner, mortgagee, occupant, or person interested therein.

This charter, which was passed March 31, 1872, took effect immediately, and being a public act the complainant was charged with notice of its provisions when he took his mortgage at a later date. That the word "assessments" used in sec. 151, should be applied to the rating of any house, lot, or tenement where water shall be taken is apparent from the use of the word "assessment" in that section in connection with water rents which are made liens upon the property charged therewith.

The effect of section 18, is, that the owner and occupier of any house, lot, or tenement where water is taken shall be liable for the payment of the price fixed by the board of public works for the use of water at the times of payment, a subject to the terms, penalties, liens, and sale of land attached to such use; and this is the contract under which the water is supplied by the city and accepted by the consumer. The owner and occupier shall each be liable for the payment of the price fixed, and, in addition, the same shall be a lien on the house, lot, or tenement where water shall be taken.

By section 151, this lien shall be and remain thereon until paid, notwithstanding, that is, prior to any mortgage, or other encumbrance.

This being the contract under which the City of Jersey City by its appropriate board, supplied the owner and mortgagor, James O'Neil, with water from its water works, the complainant who took his mortgage with full legal notice of these provisions in the charter for securing the payment of the water rents, can stand in no better position than O'Neil. Every one claiming under him by devise, descent, alienation, mortgage or other encumbrance of the land took only such title as he had to give, and subject to all liens perfected, or inchoate of which he had legal notice under the charter.

The lien claimed in behalf of the city is for water rates during the years 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, for water actually used by the owner of the land, on the premises where he lived. If they were allowed to accumulate it was the fault of the owner, and also of the mortgagee who might have learned on inquiry if the charges had been paid from year to year. The remedy for the oppression of which he now complains has always been in his own hands. If he was not satisfied to make the loan of his money on mortgage subject to liability of being postponed to water rates that might become in arrear, he could have kept it. If on inquiry he had found that the mortgagee was delinquent in payment of his water rates, after he had taken the mortgage, he could have demanded payment of the bond, and, if refused, foreclosed his mortgage.

The cases cited by the counsel have no application to the present case. Hooper v. Mallesn, 1 C. E. G. 382; Morrow v. Dows, 1 Stew. 459; Trustees, etc., v. Trenton, 3 Stew. 667; City of Paterson v. O'Neill, 5 Stew. 386, construe statutes giving general taxes priority over mortgages and other encumbrances on land. Vreeland v. Jersey City, 14 Vr. 135, and the same case on appeal 14 Vr. 638, construe that part of section 81, in the

charter which authorizes an annual assessment on all vacant lots, and lots with buildings thereon in which water is not taken, if the same are situated on streets where the distributing pipes are laid. This case holds that such assessments, in the form in which they have been imposed, are unconstitutional.

The present case differs in that it is merely a question of construction of the contract between the city, by one of its public boards and a water consumer, by which the one party agreed to supply on specific terms water from their water works at fixed rates, and upon certain conditions intended to secure the payment, and the other party agreed to use and pay for the same, on the terms specified. The mortgagee, knowing the terms of the agreement, because a party to it, so far as to waive the priority of the lien of his mortgage, according to the date of its record, for the security of the city. If this be so then there is no point in the constitutional objections that have been urged by the counsel of the appellee — that it takes the property of one to pay the debt of another — without due process of the law, — and the assessment is not made according to value, but arbitrarily, etc. The answer to all these objections is, that the charge is not imposed by the legislature without the consent of all the parties interested; the owner was not compelled to use the water, and pay the rates fixed for its enjoyment; and the mortgagee was under no obligation to lend his money subject to the priority of the city's lien for water rates.

Having assented to the terms of the charter under which the city has supplied the water to its consumer, the law will not now permit the mortgagee to change the contract, and deprive the city of its preference in payment.

The owner of the property, who has not filed an answer, admits the justice of the city's claim, and the mortgagee who has appeared and defended, is concluded by his own acts. The decree is affirmed.

113-326

Supreme Court of the United States.

OCTOBER TERM, 1884.

Case No. 1012.

THE PROVIDENT INSTITUTION FOR SAVINGS IN JERSEY CITY,
Plaintiff in Error,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY,
Defendant in Error.

Brief for Defendant in Error.

Brief for Defendant in Error.

Water Rents Assessed Against Real Estate in Jersey City are a Lien Prior to All Other Encumbrances.

The present water system of Jersey City had its inception in "An Act for the appointment of Commissioners in relation to supplying the townships of Hoboken, Van Vorst and the City of Jersey City with pure and wholesome water," passed March 18th, 1851 (Laws of New Jersey, 1851, p. 419). This act provided that the Commissioners named should report to the next Legislature a plan for supplying the places named with water. In pursuance of the plan advised in the report presented by this Commission, an act was passed "To authorize the construction of works for supplying Jersey City and places adjacent with pure and wholesome water" (Laws New Jersey of 1852, p. 419). The act (see Appendix A,

brief of plaintiffs in error) provides a plan to supply water to Jersey City, and for the appointment of Commissioners, who, by the thirteenth section, are authorized to fix the price to be paid for water. By the fourteenth section "such price or rent so fixed shall be a lien upon said house, tenement or lot in the same manner and way *as other taxes assessed* on real estate in Jersey City are liens." A further supplement to the act (Laws of 1855, p. 567), provides, Section 1, that the Mayor and Common Council shall sell lands for the "payment of said water rents and penalties, and the interest thereon, from said twentieth day of December, at the rate of twelve per centum per annum, and also costs, charges and expenses of advertising and sale, in the same manner as said Mayor and Common Council are, or may be, authorized by law to sell lands in said city for the payment of taxes thereon." The original act limited the amount to be expended by the Commissioners to $600,000. Under subsequent legislation the water works have been greatly improved and enlarged at a cost of many millions of dollars. It will be seen that, from the first, the legislative mind regarded the rents assessed for the use of water in the light of taxes, and the intention to give the dignity of a lien to such rents is followed in "An act to reorganize the local government of Jersey City" (Laws of 1871, p. 1094). Section 81 provides that the Board of Public Works (who succeeded to the duties of the Board of Water Commissioners above mentioned) "shall regulate the distribution and use of water in all places and for all purposes where the same may be required, and from time to time shall fix the prices for the use thereof, and the times of payment * * * *" and the said water rents shall, *until paid*, be liens upon the property charged therewith." This section also provides for a sale of lands for unpaid water rents, and that "said proceedings, and the effect thereof, shall be the same in all things as if the said lands were sold for taxes." Water rents are to be regarded as taxes, and the lien given for taxes is extended to such rents. That lien is described in Section 151, of the act, as follows: "All taxes and assess-

ments which shall hereafter be assessed or made upon any lands, tenements or real estate situate in said city shall be and remain a lien thereon from the time of the confirmation thereof until paid, notwithstanding any devise, descent, alienation, mortgage or other encumbrance thereof." By a supplement (Laws of 1872, p. 268), the provisions of this section are extended to taxes, water rents and assessments assessed prior to the passage of the act of 1871.

The law does not take the property of the mortgagee without compensation. It says to the municipal authorities, "You may supply water to the property and look to the property for payment." *State* vs. *Corrag'o* and *State* vs. *Hudson County Commissioners*. In *Ames* vs. *Port Huron Company*, 11 Mich., 147, the doctrine that no person shall be deprived of his property without a hearing etc., is held to apply, "except in those cases where proceedings to collect the public revenue may stand upon a peculiar footing of their own." "The power of the Legislature, by virtue of its sovereignty, to make the tax a charge upon the estate of all parties interested in the land, and to make the tax title paramount to all other and prior claims and encumbrances is not questioned" (*Campbell* vs. *Howland*, 20 N. J. Eq.; 5 C. E. Gr., 186; *Isaac* vs. *Decker*, 41 Ind., 410; *Morrow* vs. *Dows*, 1 Stew.; 28 N. J., Eq., 463). A change in the ownership would not affect such a lien, the law taking no notice of such a change (*Cooley on Taxation*, 306), and cases cited.

The assessment of rents for water is as clearly an exercise of the taxing power as is the assessment of a tax for police or other protection, and has the advantageous feature that, while the compensation for the property taken under a general tax must be sought for in theory, water rents are imposed for a direct, ascertainable benefit to the property. (See *The People* vs. *Mayor of Brooklyn*, 4 N. Y., 429, cited and commented upon in *Potter's Dwarris on Statutes and Constitution*, 409.) The owner of property assessed for taxes is not entitled to "judicial inquiry and judgment" before those taxes be-

come a lien upon his estate. The cases cited by appellant support this statement. In *Parsons* vs. *Russell*, 11 Mich., 113, it is said: "There is no analogy between this case and those of the sale of property for non-payment of taxes *or other revenue purposes;* for this is really the act of the creditor or claimant, while the other is the act of the Government in the exercise of pre-eminent sovereignty, to which all other rights are subordinate." The laws of Michigan allow the sale of all property found in the possession of a delinquent taxpayer, and provide that he shall be liable to the bailor in case goods are sold which are the subject to bailment. In *Dears* vs. *Cottrell*, 5 Mich., 261, it is held "that this act is not an infringement of that clause of the constitution which forbids the taking of private property for public use." Judge Christiancy says: that clause relates only to the taking and appropriation of property, *as such*, by right of *eminent domain*, and not the taking of property in payment of taxes. This has been expressly decided in the following cases: *Nichols* vs. *Bridgport*, 23 Conn., 189; *Guilford* vs. *Cornell et al.*, 18 Barb., 615; *Williams* vs. *Detroit*, 2 Mich., 560. The objection that the assessments are unconstitutional because not assessed according to value would, if sustained, render the support of water departments in Jersey City or any other locality impossible. It would then become necesary to raise money for the distribution of water by general taxation, and the cheap tenement, wherein a dozen faucets are used and from each of which a direct benefit is derived, could escape payment, while the burden would be thrown upon those who received nothing in return. As well might it be contended that the levying of an assessment for benefits by the building of a sewer or other improvement is in contravention of the constitutional provision that "property shall be assessed for taxes under general laws, and by uniform rules, according to its true value." This provision is not applicable to an exercise of the taxing power for benefits received. The words, "according to its true value," apply when the value of the property is the proper standard by which the public bur-

dens are apportioned. In the case of the supply of water or gas, the standard cannot be evolved from the relative values of the parcels of property assessed. The standard of supply is the basis of assessment, and the grades of the assessment must of necessity be regulated by that standard. The property is not valued, but the imposition is for what is supplied, the assessment being subject to unlimited increase, regulated by consumption. The rule of apportionment is found in the power given to the Board of Public Works in Section 81 of the charter. That Board is to fix the prices, having in view the requirements of Section 83. That the law is not, as contended by appellant, a mere authority to carry on a business, is shown by the fact that the proceeds derived from the sale of water are to be used to pay certain bonds, for the payment of which all the property of the city is liable. The laws under which this lien is claimed were enacted many years ago. Under their provisions the Water Department of the city has been conducted during that time. Their constitutionality has been presumed, and that presumption should adhere to them. This is demanded by public policy and by good faith toward those who hold the securities for the payment of which the revenue derived from the sale of water is primarily liable. Where a law affects a large proportion of assessments for years past the Court should not work a public hardship by setting it aside. (See *Kneeland* vs. *The City of Milwaukee*, 15 Wis., 414; *State, Weart* vs. *Jersey City*, 41 N. J. L.; 12 Vr., 510.) The appellants' mortgage was given in 1872, and was conditioned for the payment of money in 1873. The act under which the city's lien is claimed was in force at the time of the execution of the mortgage, and was notice to him that the property would be held liable for water rents, and that they would constitute a lien prior to his mortgage. The first water rents unpaid are for the year 1874, and it was the duty of the mortgagee to enforce his lien by foreclosure, or see that the taxes upon the property were paid. It is admitted that the water was used upon the premises sought to be charged. If the lot owner had so desired, he

could have refused to take the water, and all liability would have ceased. The act of taking the water raises an implied promise on his part to pay the price fixed for such taking. (*Vreeland* vs. *Jersey City*, 14 Vr., 136.) An annual assessment is made upon the property of each consumer. The assessment is levied on the first of each May, for the then ensuing year." If the consumer is dissatisfied with the price fixed he can avoid it by refusing to take the water. By accepting the water he accepts the price fixed. It would be difficult to devise a fairer proposition.

State vs. *Jersey City*, 41 N. J. L.; 12 Vr., 471.

Evans vs. *Walsh*, 41 N. J. L.; 12 Vr., 281.

Peterson vs. *O'Neill*, 32 N. J. Eq.; 5 Stew., 387.

Howell vs. *Essex Rail Board*, 32 N. J. Eq.; 5 Stew., 673.

Allen vs. *Drew*, 44 Vt., 174.

Allentown vs. *Henry*, 73 Penn. St., 404.

Dargan's Appeal, 68 Penn St., 204.

Isaac vs. *Decker*, 41 Ind., 410.

Eschbach vs. *Pitts*, 6 Md., 71.

Bodertha vs. *Spencer*, 40 Ind., 353.

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Counsel for Defendants.